



Water Industry Act 1991

1991 CHAPTER 56

PART II

APPOINTMENT AND REGULATION OF UNDERTAKERS

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 [^{F1}or [^{F2}any person holding] a licence under Chapter 1A of this Part] the Secretary of State or the Director is satisfied—

- (a) that that company [^{F3}or that person] is contravening—
- (i) any condition of the company's appointment [^{F4}or [^{F5}the person's] 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 [^{F6}or that person][^{F7}is 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.

[^{F8}(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—

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- (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 [^{F9}a person] 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 [^{F10}any person] holding a licence under Chapter 1A of this Part, the Secretary of State or the Authority is satisfied that [^{F11}the person]—
- (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 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 [^{F12}or [^{F13}any person holding] 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) [^{F14}or (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
- [^{F15}(ii) is likely to contravene any such condition or requirement;][^{F16}or
- (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;

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- (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 [^{F17}or [^{F18}a person holding] 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 [^{F19}or licence]; and
 - (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 [^{F20}or 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.
- [^{F21}(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

- F1** 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\(e\)](#) (with [Sch. 2 para. 8](#))
- F2** Words in s. 18(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F3** Words in s. 18(1)(a) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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- F4** 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)
- F5** Words in s. 18(1)(a)(i) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 26(2)(c)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F6** Words in s. 18(1)(b) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 26(2)(d)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F7** 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.)
- F8** 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)
- F9** Words in s. 18(1A)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 26(3)(a)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F10** Words in s. 18(1A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 26(3)(b)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F11** Words in s. 18(1A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 26(3)(c)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F12** 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)
- F13** Words in s. 18(2) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 26(4)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F14** 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)
- F15** 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**)
- F16** 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)
- F17** 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)
- F18** Words in s. 18(6)(a) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 26(5)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F19** 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)
- F20** 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)
- F21** 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)

- C1** S. 18 extended (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 20(3)**, 225(2).
- C2** S. 18 extended (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 197(6)**, 225(2).
- C3** S. 18 extended (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 203(5)**, 225(2).
- C4** S. 18: power to extend conferred (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 219(2)(a)**, 225(2).
- C5** 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)**.
- C6** S. 18 extended (prosp.) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), **ss. 52(3)**, 66
- C7** S. 18 extended (prosp.) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), **ss. 25(7)**, 66
- C8** S. 18 extended (20.4.2010) by [The Water Supply \(Water Quality\) Regulations 2010 \(S.I. 2010/994\)](#), regs. 1(1), **38** (with reg. 1(2)(3))

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- C9** S. 18 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 6\(1\)](#) (with reg. 1(1)(c))

19 Exceptions to duty to enforce.

- (1) ^{F22}Subject 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 ^{F23}person], 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;

^{F24}(aa) that the extent to which the ^{F23}person] caused or contributed to, or was likely to cause or contribute to, a contravention was trivial;]

(b) that the ^{F23}person] 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 ^{F23}person] 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.

^{F25}(1A) Before making an enforcement order or confirming a provisional enforcement order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(1B) The Authority shall not make an enforcement order or confirm a provisional enforcement order if it considers that it would be more appropriate to proceed 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 ^{F23}person] that he is considering the making in relation to the ^{F23}person] of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in paragraph (a), ^{F26}(aa),] (b) or (c) of subsection (1) above ^{F27}or, in the case of the Director, ^{F28}has decided that it would be more appropriate to proceed under the Competition Act 1998] ,] he shall—

(a) serve notice that he is so satisfied ^{F29}or has so decided] on the ^{F23}person];

^{F30}(b) publish in such manner as the Secretary of State or 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 them—

(i) a copy of the notice, and

(ii) where the Secretary of State or the Authority is satisfied as mentioned in paragraph (b) of subsection (1), a summary of the undertaking describing the steps to be taken under it; and]

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- (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.

[^{F31}(3A) In a case where notice under subsection (3)(a) falls to be served by the Welsh Ministers, references to the Secretary of State in subsection (3)(b) are to be read as references to the Welsh Ministers.]

- (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

- F22** Words in s. 19(1) inserted (14.6.2000) by S.I. 2000/1297, **art. 8**
- F23** Word in s. 19 substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 27**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F24** 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**)
- F25** S. 19(1A)(1B) substituted for s. 19(1A) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(2)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F26** 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**)
- F27** 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.**
- F28** Words in s. 19(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(3)(a)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F29** Words in s. 19(3)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(3)(b)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F30** S. 19(3)(b) substituted (20.4.2010) by The Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010 (S.I. 2010/996), regs. 1, **2(2)**
- F31** S. 19(3A) inserted (20.4.2010) by The Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010 (S.I. 2010/996), regs. 1, **2(3)**

Modifications etc. (not altering text)

- C10** S. 19 applied (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 6(2)** (with reg. 1(1)(c))
- C11** S. 19(1)(b) restricted (14.6.2000) by S.I. 2000/1297, **art. 2**
- C12** 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.

- (1) Before making a final enforcement order [^{F32}under section 18(1) above] or confirming a provisional enforcement order [^{F33}in 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;

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- (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 [^{F34}twenty-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.
- [^{F35}(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) [^{F36}or (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 [^{F37}person to whom] 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 [^{F37}person to whom] 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 [^{F37}person to whom] the order relates such notice as appears to him to be requisite of his proposal to make or confirm the order with modifications;

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- (b) in that notice specify the period (not being less than [^{F38}twenty-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 [^{F37}person to whom] the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on the Director; and
 - (b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.
- (6) Before revoking 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 [^{F37}person to whom] 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

F32 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](#))

F33 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](#))

F34 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\(f\)](#)

F35 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](#))

F36 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](#))

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- F37** Words in s. 20 substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 28](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F38** 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)

- C13** S. 20 applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 6\(2\)](#) (with reg. 1(1)(c))
- C14** 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 [^{F39}person to whom] an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—
- (a) that its making or confirmation was not within the powers of section 18 above; or
 - (b) that any of the requirements of section 20 above have not been complied with in relation to it,
- the [^{F40}person] 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 [^{F41}person] 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.

Textual Amendments

- F39** Words in s. 21(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 29\(2\)\(a\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F40** Word in s. 21(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 29\(2\)\(b\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F41** Word in s. 21(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 29\(3\)](#); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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 [^{F42}person] 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) [^{F43}or (1A)

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- (a)] below, it shall be a defence for the [^{F42}person] to show that [^{F44}the person] 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

- F42** Word in s. 22(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 30(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F43** 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**)
- F44** Words in s. 22(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 30(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C15** S. 22 applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(2)** (with reg. 1(1)(c))

[^{F45}Financial penalties

Textual Amendments

- F45** 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 [^{F46}person] 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 [^{F47}person] holding a licence under Chapter 1A of this Part, that the [^{F47}person]—
- (i) has contravened or is contravening any condition of the licence; or

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- (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 [^{F48}that company or that person] 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 [^{F49}person] holding a licence under Chapter 1A of this Part of any such requirement; or
- (b) in the case of any [^{F50}person] holding a licence under Chapter 1A of this Part, that the [^{F50}person]—
- (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 [^{F51}that company or that person] a penalty of such amount as is reasonable in all the circumstances of the case.
- (3) In a case in which—
- (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 [^{F52}person] 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.

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- (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 [^{F53}on a person], the enforcement authority shall give notice—
- (a) stating that he or it has imposed a penalty on the [^{F54}person] 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 [^{F55}person], by which the penalty is required to be paid.
- (7) The [^{F56}person on whom the penalty has been imposed] may, within twenty-one days of the date of service ^{F57}... 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;
 - (b) by serving a copy of the notice on the [^{F58}person on whom the penalty is to be or has been imposed];
 - (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^{F59}—
- (a) 10% of the turnover of the company, or
 - (b) in a case where the person on whom the penalty is imposed is not a company, 10% of the turnover of the business of the person,
- (determined] in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).

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(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.

[^{F60}(13) Before imposing a penalty under this section, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(14) The Authority shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.]

Textual Amendments

- F46** Word in s. 22A(1)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(2\)\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F47** Word in s. 22A(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(2\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F48** Words in s. 22A(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(2\)\(c\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F49** Word in s. 22A(2)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(3\)\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F50** Word in s. 22A(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(3\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F51** Words in s. 22A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(3\)\(c\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F52** Word in s. 22A(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(4\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F53** Words in s. 22A(6) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(5\)\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F54** Word in s. 22A(6)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(5\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F55** Word in s. 22A(6)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(5\)\(c\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F56** Words in s. 22A(7) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(6\)\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F57** Words in s. 22A(7) repealed (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(6\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F58** Words in s. 22A(8)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(7\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F59** Words in s. 22A(11) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(8\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F60** S. 22A(13)(14) substituted for s. 22A(13) (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 14 para. 10](#); [S.I. 2014/416, art. 2\(1\)\(e\)](#) (with [Sch.](#))

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Modifications etc. (not altering text)

- C16** S. 22A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 6(3)** (with reg. 1(1)(c))

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.

Modifications etc. (not altering text)

- C17** S. 22B applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 6(4)** (with reg. 1(1)(c))

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 [^{F61}on a person] in respect of the contravention or failure later than the end of the period of [^{F62}five years] 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 [^{F63}person] under section 22A(8) above; or
 - (b) a notice relating to the contravention or failure is served on the [^{F64}person] under section 203(2) below.
- (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 [^{F65}on a person] in respect of the contravention or failure unless the notice relating to the penalty under section 22A(4) above was served on the [^{F66}person] 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.

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Textual Amendments

- F61** Words in s. 22C(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 32(2)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F62** Words in s. 22C(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 26(1)**, 94(2)(g) (with s. 26(2))
- F63** Word in s. 22C(1)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 32(2)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F64** Words in s. 22C(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 32(2)(c)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F65** Words in s. 22C(2) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 32(3)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F66** Word in s. 22C(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 32(3)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C18** S. 22C applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(4)** (with reg. 1(1)(c))

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.

Modifications etc. (not altering text)

- C19** S. 22D applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(4)** (with reg. 1(1)(c))

22E Appeals

- (1) If the ^{F67}person on whom] 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.

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- (2) An application under subsection (1) above must be made—
- (a) within forty-two days from the date of service on the [F68 person] 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 [F69 person] under section 22A(7) above, within forty-two days from the date the [F69 person] 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—
- (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 [F70 person] 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.

Textual Amendments

- F67** Words in s. 22E(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F68** Word in s. 22E(2)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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- F69** Word in s. 22E(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F70** Word in s. 22E(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

Modifications etc. (not altering text)

- C20** S. 22E applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 6\(4\)](#) (with reg. 1(1)(c))

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 [^{F71}person], as a civil debt due to him or it, any of the penalty and any interest which has not been paid.]

Textual Amendments

- F71** Word in s. 22F substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 34](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

Modifications etc. (not altering text)

- C21** S. 22F applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 6\(4\)](#) (with reg. 1(1)(c))

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 [^{F72}or 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 [^{F73}holding an appointment under Chapter 1 of this Part] shall be—
 - (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

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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).

[^{F74}(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.]

[^{F75}(2B) Where a company is in special administration as a result of an order made on the grounds that the company is or is likely to be unable to pay its debts—

- (a) a purpose of the special administration order is to rescue the company as a going concern, and
- (b) the transfer purpose under subsection (2)(a) or (2A)(a) applies only if the special administrator thinks that—
 - (i) it is not likely to be possible to rescue the company as a going concern, or
 - (ii) transfer is likely to secure more effective performance of the functions or activities mentioned in subsection (2)(a) or (2A)(a).

(2C) Where subsection (2B) applies, subsections (2)(b) and (2A)(b) have effect as if they referred to carrying out functions, or carrying on activities, pending rescue or transfer.

(2D) For the purpose of rescuing the company as a going concern a special administrator may propose—

- (a) a company voluntary arrangement under Part 1 of the Insolvency Act 1986, or
- (b) a compromise or arrangement in accordance with Part 26 of the Companies Act 2006.

(2E) The Secretary of State may by regulations made by statutory instrument—

- (a) modify a provision of the Insolvency Act 1986 or the Companies Act 2006 in respect of the arrangements and compromises mentioned in subsection (2D) in so far as they apply to a company which is or has been in special administration;
- (b) make other supplemental provision about those arrangements and compromises (which may, in particular, apply or modify the effect of an enactment about insolvency or companies).

(2F) Provision under subsection (2E)(a) or (b) may, in particular, confer a function on—

- (a) the Secretary of State,
- (b) the Welsh Ministers, or
- (c) the Authority.

(2G) Regulations under subsection (2E) may not be made unless—

- (a) the Welsh Ministers have consented to the making of the regulations, and

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- (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]
- [^{F76}(2H) A transfer under subsection (2) or (2A) may be effected by—
- (a) transferring all or part of the company's undertaking to a wholly-owned subsidiary of the company, and
 - (b) then transferring securities in the subsidiary to another company.]
- [^{F77}(3) Schedule B1 to the Insolvency Act 1986 (administration) applies to special administration (subject to regulations under subsection (3A)).
- (3A) The Secretary of State may make regulations about special administration which—
 - (a) apply (with or without modification) an insolvency provision;
 - (b) disapply an insolvency provision;
 - (c) modify the effect of an insolvency provision;
 - (d) make provision similar to, and in place of, an insolvency provision.
 - (3B) In subsection (3A) “insolvency provision” means a provision of the Insolvency Act 1986 or another enactment about insolvency (including (i) a provision about administration, (ii) a provision about consequences of insolvency, and (iii) a provision conferring power to make rules).
 - (3C) A reference in an enactment to Part II of the Insolvency Act 1986 includes a reference to that Part as applied by or under this section (subject to regulations under subsection (3A)).
 - (3D) Regulations under subsection (3A) shall be made by statutory instrument and may not be made unless—
 - (a) the Welsh Ministers have consented to the making of the regulations, and
 - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]
 - (4) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which
 - [^{F78}(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 ^{M1}Insolvency Act 1986.
 - [^{F79}(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.]

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Textual Amendments

- F72** 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](#))
- F73** 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](#))
- F74** 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](#))
- F75** [S. 23\(2B\)-\(2G\)](#) inserted (1.10.2010 for specified purposes, 12.1.2024 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 3** (with s. 49(1)(6)); [S.I. 2010/2169, art. 4](#); [S.I. 2024/35, art. 2\(b\)](#)
- F76** [S. 23\(2H\)](#) inserted (1.10.2010 for specified purposes, 12.1.2024 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 5(1)** (with s. 49(1)(6), [Sch. 5 para. 5\(4\)](#)); [S.I. 2010/2169, art. 4](#); [S.I. 2024/35, art. 2\(b\)](#)
- F77** [S. 23\(3\)-\(3D\)](#) substituted for s. 23(3) (1.10.2010 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 6(1)** (with s. 49(1)(6)); [S.I. 2010/2169, art. 4, Sch.](#)
- F78** 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](#))
- F79** 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)

- C22** S. 23 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 7(2)** (with reg. 1(1)(c))
- C23** S. 23(1) restricted (15.11.1999) by [S.I. 1999/2787, art. 4](#)

Marginal Citations

- M1** 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.

[^{F80}(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.]

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- (2) The grounds mentioned in [F81]subsections (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 [F82]or 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 [F82]or licence];
 - [F83](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;
 - (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 [F84]section 440 of the Companies Act 1985[[F84]section 124A of the Insolvency Act 1986] (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 [F85]or was not a qualifying licensed water supplier] ; or
 - (e) [F86:] 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 M2Insolvency Act 1986 (“the 1986 Act”); and no such petition shall be withdrawn except with the leave of the High Court.
- [F87](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.]
- [F87](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;

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- (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).
- [^{F88}(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

- F80** 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)
- F81** 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)
- F82** 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)
- F83** 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)
- F84** Words in s. 24(2)(d) substituted (1.10.2010 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 6(4)** (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.
- F85** 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)
- F86** 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)
- F87** S. 24(4)(5) ceases to have effect (1.10.2010 for specified purposes) by virtue of [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 6(2)** (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.
- F88** 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)

Modifications etc. (not altering text)

- C24** S. 24 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 7(3)** (with reg. 1(1)(c))

Marginal Citations

- M2** 1986 c. 45.

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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 [^{F89}or 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 [^{F90}or a qualifying licensed water supplier], it shall, instead, make a special administration order in relation to the company.

Textual Amendments

- F89** 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](#))
- F90** 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](#))

Modifications etc. (not altering text)

- C25** [S. 25](#) applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 7\(5\)](#) (with reg. 1(1)(c))

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 [^{F91}or 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 ^{M3}Insolvency Act 1986; and
 - (c) no step shall be taken by any person to enforce any security over the company's property except where that person has served fourteen days' notice of his intention to take that step on the Secretary of State and on the Director.
- (2) In this section “security” and “property” have the same meanings as in Parts I to VII of the ^{M4}Insolvency Act 1986.

Textual Amendments

- F91** 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](#))

Modifications etc. (not altering text)

- C26** [S. 26](#) applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 7\(6\)](#) (with reg. 1(1)(c))

Marginal Citations

- M3** 1986 c. 45.

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M4 1986 c. 45.

Status:

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