



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART II

#### APPOINTMENT AND REGULATION OF UNDERTAKERS

#### CHAPTER III

#### PROTECTION OF CUSTOMERS ETC..

#### *Provisions with respect to competition*

### 31 Functions of Director with respect to competition.

(1) <sup>F1</sup> .....

<sup>F2</sup>(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the <sup>F3</sup>CMA].

(2A) This subsection applies to the functions of the <sup>F4</sup>CMA] under Part 4 of the 2002 Act (other than sections 166 <sup>F5</sup>171 and 174E]) so far as <sup>F6</sup>those functions—

- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
- (b) relate to] commercial activities connected with the supply of water or the provision of sewerage services.]

<sup>F7</sup>(3) The Director shall be entitled to exercise, concurrently with the <sup>F8</sup>CMA], the functions of the <sup>F8</sup>CMA] under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) <sup>F9</sup>, 40B(1) to (4)] 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, <sup>F10</sup>or]
- <sup>F11</sup>(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),]

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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.]

[<sup>F12</sup>(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) [<sup>F13</sup>above—

- (a) references] in Part 4 of the 2002 Act to the [<sup>F14</sup>CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 [<sup>F15</sup>, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise [<sup>F16</sup>requires);
- (b) references in that Part to section 5 of the 2002 Act are to be construed as including references to section 27(1) and (2) of this Act.]

[<sup>F17</sup>(4ZA) Section 130A of the 2002 Act is to have effect in its application in relation to the Authority] by virtue of subsections (2) and (2A)—

(a) as if for subsection (1) of that section there were substituted—

“(1) Where the Water Services Regulation Authority—

- (a) is proposing to carry out its functions under section 27(1) and (2) of the Water Industry Act 1991 in relation to a matter for the purposes mentioned in subsection (2), and
- (b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and

- (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with the supply of water or the provision of sewerage services (within the meaning given by section 219(1) of the Water Industry Act 1991)”.]

<sup>F18</sup>[(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 [<sup>F19</sup>the CMA] are to be read as including a reference to the Director ([<sup>F20</sup>except in sections 31D(1) to (6), 38(1) to (6)] [<sup>F9</sup>, 40B(1) to (4)], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

[<sup>F21</sup>(5) Before the [<sup>F22</sup>CMA] 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 [<sup>F22</sup>CMA] 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 [<sup>F23</sup>a CMA group] in carrying out an investigation on a [<sup>F24</sup>market investigation reference made by the Authority (under section 131 of the 2002 Act)] by virtue of subsection (2) [<sup>F25</sup>. . . above, to give to the [<sup>F26</sup>group] —

- (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

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[<sup>F26</sup>group] for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the [<sup>F26</sup>group] without any such request; and

(b) any other assistance which the [<sup>F26</sup>group] may require, and which it is within his power to give, in relation to any such matters;

and the [<sup>F26</sup>group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

[<sup>F27</sup>(7A) In subsection (7) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

(8) If any question arises as to whether subsection (2) or (3) above <sup>F28</sup>. . . 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) [<sup>F29</sup>Part 4 of the 2002 Act]; or

<sup>F30</sup>[(b) Part I of the Competition Act 1998 ([<sup>F31</sup>other than sections 31D(1) to (6), 38(1) to (6)][<sup>F32</sup>, 40B(1) to (4)] and 51),]

by or in relation to the Director on the ground that it should have been done by or in relation to [<sup>F33</sup>the CMA] .

[<sup>F34</sup>(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 [<sup>F35</sup>CMA] included references to the Director.]

(9) <sup>F36</sup> . . . . .

#### Textual Amendments

- F1** 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)
- F2** 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.
- F3** Word in s. 31(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(2)** (with art. 3)
- F4** Word in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(3)(a)** (with art. 3)
- F5** Words in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(3)(b)** (with art. 3)
- F6** Words in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(3)(c)** (with art. 3)
- F7** 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)**
- F8** Word in s. 31(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(4)** (with art. 3)
- F9** Words in s. 31(3)(4A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 5**; [S.I. 2014/416](#), art. 2(1)(f) (with Sch.); [S.I. 2014/416](#), art. 2(1)(f) (with Sch.)

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- F10** Word in s. 31(3)(b) inserted (31.12.2020) by S.I. 2019/93, Sch. 1 para. 4(2) (as substituted by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1343), regs. 1(1), **16**)
- F11** S. 31(3)(c) substituted for s. 31(3)(c)(d) by S.I. 2019/93, Sch. 1 para. 4(3) (as substituted by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1343), regs. 1(1), **16**)
- F12** 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.
- F13** Words in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(a)** (with art. 3)
- F14** Word in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(b)** (with art. 3)
- F15** Words in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(c)** (with art. 3)
- F16** Words in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(d)** (with art. 3)
- F17** S. 31(4ZA) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(6)** (with art. 3)
- F18** 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.**
- F19** Words in s. 31(4A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(7)** (with art. 3)
- F20** 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)
- F21** 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.
- F22** Word in s. 31(5)(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(8)** (with art. 3)
- F23** Words in s. 31(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(a)(i)** (with art. 3)
- F24** Words in s. 31(7) substituted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(a)(ii)** (with art. 3)
- F25** 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.**
- F26** Word in s. 31(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(b)** (with art. 3)
- F27** S. 31(7A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(10)** (with art. 3)
- F28** 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)
- F29** 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.

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- F30** 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. 10 Pt. II para. 5(5)(12)**
- F31** 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)**
- F32** Words in s. 31(8)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 5**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F33** Words in s. 31(8) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(11)** (with art. 3)
- F34** 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.
- F35** Word in s. 31(8A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(12)** (with art. 3)
- F36** 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)**

- C1** 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. 10 para. 5(1)**
- 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. 10 Pt. I para. 5(1)**

**[<sup>F37</sup>32 Duty to refer merger of water or sewerage undertakings.**

[<sup>F38</sup>Subject to sections 33 and 33A below,] it shall be the duty of the [<sup>F39</sup>CMA to make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA 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
- (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**

- F37** 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)
- F38** Words in s. 32 substituted (18.12.2015) by Water Act 2014 (c. 21), **ss. 14(1)**, 94(3); S.I. 2015/1938, **art. 2(d)**
- F39** Words in s. 32 substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 85** (with art. 3)

**[<sup>F40</sup>33 Exclusion of small mergers from duty to make reference.**

- (1) The [<sup>F41</sup>CMA] 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 [<sup>F41</sup>CMA] —
  - (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

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- (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 [<sup>F42</sup>CMA] 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).
- [<sup>F43</sup>(6A) The CMA must—
- (a) keep under review the conditions set out in subsection (1)(a) and (b), and
  - (b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.]
- (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.

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- (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

- F40** 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**)
- F41** Word in s. 33(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), **art. 1(1)**, **Sch. 1 para. 86** (with **art. 3**)
- F42** Word in s. 33(6) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), **art. 1(1)**, **Sch. 1 para. 86** (with **art. 3**)
- F43** S. 33(6A) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 15**, 94(2)(c)

#### [<sup>F44</sup>33A Exceptions to duty to make reference

- (1) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(a) if it believes that—
- the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a merger reference;
  - the prospective merger is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
  - the prospective merger is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (2) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(b) if it believes that—
- the merger has not prejudiced and is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
  - the merger has prejudiced or is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (3) Before forming a view as to the matters in subsection (1)(b) or (c) or (2)(a) or (b), the CMA must—
- request the Authority to give an opinion under section 33B, and
  - consider that opinion.
- (4) The CMA may not make a merger reference under section 32 if—
- it is considering whether to accept an undertaking under section 33D instead of making such a reference; or
  - it is prevented by section 74 of the Enterprise Act 2002 (effect of accepting an undertaking in lieu), in a case where that section as applied by paragraph 1 of Schedule 4ZA may have effect to prevent such a merger reference.
- (5) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA.

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#### Textual Amendments

**F44** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

### 33B Opinion of the Authority

- (1) Where the CMA makes a request under section 33A(3), the Authority must give its opinion on—
  - (a) whether and to what extent the actual or prospective merger has prejudiced or is likely to prejudice the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises, and
  - (b) where it forms the view that the actual or prospective merger has prejudiced or is likely to prejudice that ability, whether the prejudice in question is outweighed by any relevant customer benefits relating to the merger.
- (2) In forming an opinion on the matters in subsection (1), the Authority must apply the methods set out in the statement under section 33C that has effect when the request under section 33A(3) is made.
- (3) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of this section as references to what the Authority believes.

#### Textual Amendments

**F44** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

### 33C Statement of methods

- (1) The Authority must prepare and keep under review a statement of the methods to be applied in forming an opinion on the matters in section 33B(1).
- (2) The statement must in particular set out—
  - (a) the criteria to be used for assessing the effect of any particular water enterprise ceasing to be a distinct enterprise on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises;
  - (b) the relative weight to be given to the criteria.
- (3) Before preparing or altering the statement, the Authority must consult—
  - (a) the Secretary of State,
  - (b) the Welsh Ministers,
  - (c) the CMA, and
  - (d) relevant undertakers.
- (4) The Authority must from time to time publish the statement as it has effect for the time being.]



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### Textual Amendments

**F44** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

### [<sup>F45</sup>33D Undertakings in lieu of a merger reference

- (1) If the CMA considers that it is under a duty to make a merger reference under section 32, it may instead of making such a reference accept undertakings to take such action as it thinks appropriate from such of the parties concerned in the actual or prospective merger as it considers appropriate.
- (2) The power under subsection (1) is to be exercised for the purpose of remedying, mitigating or preventing the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises that the actual or prospective merger has had, may have had or may be likely to have.
- (3) In forming a view for the purposes of subsection (1) as to whether it is under a duty to make a merger reference under section 32, the CMA—
  - (a) is to disregard the effect of section 33A(4)(a), but
  - (b) is to take into account the powers under section 33A(1) and (2) to decide not to make a merger reference.
- (4) In proceeding under subsection (1), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises.
- (5) In proceeding under subsection (1), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the actual or prospective merger.
- (6) Before deciding whether or not to accept an undertaking under this section, the CMA must—
  - (a) request the Authority to give its opinion on the effect of the undertakings offered, and
  - (b) consider the Authority's opinion.
- (7) Where the CMA makes a request under subsection (6), the Authority must give its opinion on the effect of the undertakings offered.
- (8) An undertaking under this section—
  - (a) comes into force when accepted;
  - (b) may be varied or superseded by another undertaking under this section;
  - (c) may be released by the CMA.
- (9) An undertaking under this section ceases to be in force if an order under section 75 or 76 of the Enterprise Act 2002 (powers to make an order where an undertaking is not fulfilled) is made, in a case where that provision of the Enterprise Act 2002 as applied by paragraph 1 of Schedule 4ZA may have effect in relation to such an undertaking.
- (10) The CMA must consider any representations received by it in relation to varying or releasing an undertaking under this section as soon as reasonably practicable.

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- (11) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of subsection (7) as references to what the Authority believes.]

**Textual Amendments**

**F45** S. 33D inserted (18.12.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 14(3)**, 94(3); S.I. 2015/1938, art. 2(d)

**[<sup>F46</sup>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**

**F46** 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](#))

**[<sup>F47</sup>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 [<sup>F48</sup>relevant 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 [<sup>F49</sup>CMA] or the Secretary of State, in a case in which, or to any extent to which, the [<sup>F49</sup>CMA] 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.
- (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 [<sup>F50</sup>CMA] is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.]

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#### Textual Amendments

- F47** 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**)
- F48** 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)
- F49** Word in s. 35(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 87** (with art. 3)
- F50** Word in s. 35(5) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 87** (with art. 3)

**Changes to legislation:**

Water Industry Act 1991, Cross Heading: Provisions with respect to competition is up to date with all changes known to be in force on or before 21 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 3 Ch. 2B inserted by [2014 c. 21 s. 12](#)
- s. 17(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(4)(b) (as substituted) by [S.I. 2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17A(c) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(d) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(2)(ba) and word inserted by [2014 c. 21 Sch. 5 para. 4\(2\)\(b\)](#)
- s. 17R(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(7)(b) (as substituted) by [S.I. 2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17AA(1)(ba)(bb) inserted by [2014 c. 21 Sch. 5 para. 5\(2\)](#)
- s. 17BA(5A) inserted by [2014 c. 21 Sch. 5 para. 7\(3\)](#)
- s. 17HA(9)(b)(ia) inserted by [2014 c. 21 Sch. 5 para. 16\(2\)](#)
- s. 23(2AA) inserted by [2014 c. 21 Sch. 7 para. 35\(4\)](#)
- s. 23(8)(9) inserted by [2014 c. 21 Sch. 7 para. 35\(10\)](#)
- s. 39E-39H inserted by [2021 c. 30 s. 78\(7\)](#)
- s. 87(7C)-(7F) inserted by [2012 c. 7 s. 35\(6\)](#)
- s. 94A-94E inserted by [2021 c. 30 s. 79](#)
- s. 95ZA(6) inserted by [2014 c. 21 Sch. 5 para. 39\(4\)](#)
- s. 96ZA(2)-(5) substituted for s. 96ZA(2) by [2014 c. 21 Sch. 5 para. 40](#)
- s. 106B(3A) inserted by [2014 c. 21 Sch. 7 para. 94](#)
- s. 117G(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(2\)](#)
- s. 117G(4)-(4D) substituted for s. 117(4) by [2014 c. 21 Sch. 5 para. 41\(3\)](#)
- s. 117G(6)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(4\)](#)
- s. 117K(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(2\)](#)
- s. 117K(5)(5A) substituted for s. 117(5) by [2014 c. 21 Sch. 5 para. 42\(3\)](#)
- s. 117L(9) inserted by [2014 c. 21 Sch. 5 para. 43\(3\)](#)
- s. 117N(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(2\)](#)
- s. 117N(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(3\)](#)
- s. 117N(11)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(4\)](#)
- s. 117O(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(2\)](#)
- s. 117O(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(3\)](#)
- s. 117S(7)-(9) inserted by [2014 c. 21 Sch. 5 para. 49](#)
- s. 119(2)(ab) inserted by [2003 c. 37 s. 89\(1\)\(a\)](#)
- s. 119(3) inserted by [2003 c. 37 s. 89\(1\)\(b\)](#)
- s. 121(1)(ba) inserted by [2003 c. 37 s. 89\(2\)\(a\)](#)
- s. 141DA inserted by [2021 c. 30 s. 81](#)
- s. 141DC inserted by [2021 c. 30 s. 83](#)
- s. 177K(7)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(4\)](#)
- s. 207D and cross-heading inserted by [2014 c. 21 s. 39](#)
- s. 207D(5) word repealed by [2014 c. 21 Sch. 5 para. 52\(a\)](#)

- s. 207D(5) words inserted by 2014 c. 21 Sch. 5 para. 52(b)
- s. 213(1ZA) inserted by 2014 c. 21 Sch. 7 para. 119(3)
- s. 213(1ZA) repealed by 2014 c. 21 Sch. 5 para. 53