



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART III

#### WATER SUPPLY

##### Modifications etc. (not altering text)

- C1** Part III: definition of "consumer" applied (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), [ss. 176\(7\), 225\(2\)](#).
- C2** Part III: definition of "water fittings" applied (01.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), [ss. 15\(1\), 17\(2\)](#).
- C3** Pt. 3 modified (E.) (24.3.2011) by [The Hull and Goole Port Health Authority Order 2011 \(S.I. 2011/939\)](#), arts. 1(1), 9, [Sch. 2](#)

### CHAPTER I

#### GENERAL DUTIES OF WATER UNDERTAKERS [<sup>F1</sup>ETC]

##### Textual Amendments

- F1** Word in Pt. 3 Ch. 1 heading inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 46](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

#### 37 General duty to maintain water supply system etc.

- (1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—
- (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and

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- (b) for maintaining, improving and extending the water undertaker’s water mains and other pipes,  
as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.
- (2) The duty of a water undertaker under this section shall be enforceable under section 18 above—
  - (a) by the Secretary of State; or
  - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (3) The obligations imposed on a water undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 38 below and shall not be in any way qualified by any such provision.

**Modifications etc. (not altering text)**

- C4 S. 37 saved (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 19(2)**, 225(2).
- C5 S. 37 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. 10(1)** (with reg. 1(1)(c))

**[<sup>F2</sup>37A Water resources management plans: preparation and review**

- (1) It shall be the duty of each water undertaker to prepare [<sup>F3</sup>, publish] and maintain a water resources management plan.
- (2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.
- (3) A water resources management plan shall address in particular—
  - (a) the water undertaker’s estimate of the quantities of water required to meet those obligations;
  - (b) the measures which the water undertaker intends to take or continue for the purpose set out in subsection (2) above (also taking into account for that purpose the introduction of water into the undertaker’s supply system by or on behalf of [<sup>F4</sup>water supply licensees]);
  - (c) the likely sequence and timing for implementing those measures; and
  - (d) such other matters as the Secretary of State may specify in directions [<sup>F5</sup>(and see also section 37AA).]
- (4) The procedure for preparing [<sup>F6</sup>and publishing] a water resources management plan (including a revised plan) is set out in section 37B below.
- (5) Before each anniversary of the date when its plan (or revised plan) was last published, the water undertaker shall —
  - (a) review its plan; and
  - (b) send a statement of the conclusions of its review to the Secretary of State.

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- (6) The water undertaker shall prepare [<sup>F7</sup>and publish] a revised plan in each of the following cases—
- (a) following conclusion of its annual review, if the review indicated a material change of circumstances;
  - (b) if directed to do so by the Secretary of State;
  - (c) in any event, not later than the end of the period of five years beginning with the date when the plan (or revised plan) was last published,
- and shall follow the procedure in section 37B below (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).
- (7) The Secretary of State may give directions specifying—
- (a) the form which a water resources management plan must take;
  - (b) the planning period to which a water resources management plan must relate.
- (8) Before preparing its water resources management plan (including a revised plan), the water undertaker shall consult—
- (a) the Environment Agency<sup>F8</sup>, if the plan (or revised plan) would affect water resources in England;]
  - <sup>F9</sup>(aa) [ the NRBW, if the plan (or revised plan) would affect water resources in Wales;]
  - (b) the Authority;
  - (c) the Secretary of State; and
  - (d) any [<sup>F10</sup>water supply licensee] which supplies water to premises in the undertaker’s area via the undertaker’s supply system.
- <sup>F11</sup>(9) Before giving a direction under subsection (6)(b), the Secretary of State shall consult—
- (a) the Environment Agency, if the revised plan would affect water resources in England, and
  - (b) the NRBW, if the revised plan would affect water resources in Wales.
- (9A) Before giving a direction under subsection (6)(b), the Welsh Ministers shall consult—
- (a) the NRBW, if the revised plan would affect water resources in Wales, and
  - (b) the Environment Agency, if the revised plan would affect water resources in England.]
- (10) In this section, in relation to a water resources management plan, “published” means published in accordance with section 37B(8)(a) below.

#### Textual Amendments

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\)](#), **ss. 62**, 105(3); S.I. 2004/2528, **art. 2(j)** (with **art. 4**); S.I. 2005/2714, **art. 2(i)** (with **Sch. paras. 6, 8**); S.I. 2006/984, **art. 2(q)** (with **art. 3, Sch.**); S.I. 2007/1021, **art. 2(a)**
- F3** Word in s. 37A(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 28(2)(a)**, 94(2)(g)
- F4** Words in s. 37A(3)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 47(a)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(k)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F5** Words in s. 37A(3) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 27(2)**, 94(2)(g)
- F6** Words in s. 37A(4) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 28(2)(b)**, 94(2)(g)
- F7** Words in s. 37A(6) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 28(2)(c)**, 94(2)(g)

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- F8** Words in s. 37A(8)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 229(2)(a)** (with Sch. 7)
- F9** S. 37A(8)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 229(2)(b)** (with Sch. 7)
- F10** Words in s. 37A(8)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 47(b)**; [S.I. 2016/465](#), art. 2(m), **Sch. 1 para. 1(k)** (with Sch. 2) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F11** S. 37A(9)(9A) substituted for s. 37A(9) (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 229(3)** (with Sch. 7)

**Modifications etc. (not altering text)**

- C6** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672](#), **Sch. 2** (as amended by [Water Act 2003 \(c. 37\)](#), **ss. 100(3) (7)**, 105(3); [S.I. 2004/2528](#), **art. 2(s)** (with savings in art. 4); [S.I. 2005/2714](#), **art. 2(k)** (with Sch. 2 para. 8); [S.I. 2007/1021](#), **art. 2(c)**)

**[<sup>F12</sup>37AA] Water resources management plans for England: resilience**

- (1) The Secretary of State may give a direction about the basis on which a water resources management plan for England is to be prepared.
- (2) A direction under this section may be given only where the Secretary of State considers it appropriate to do so with a view to securing that a water undertaker is able to meet the need for the supply of water to consumers in particular circumstances.
- (3) A direction under this section may, in particular, require a plan to be prepared on the basis of a specified assumption, including—
- (a) an assumption as to whether, and how often, specified circumstances are likely to arise;
  - (b) an assumption that a specified power would or would not be exercised by the water undertaker or another person in specified circumstances.
- (4) Before giving a direction under this section, the Secretary of State must consult—
- (a) the Authority,
  - (b) the Welsh Ministers,
  - (c) each water undertaker to which the direction would apply,
  - (d) the Environment Agency,
  - (e) the NRBW, and
  - (f) such other persons as the Secretary of State considers appropriate.
- (5) In this section—
- “specified” means specified in a direction under this section;
- “water resources management plan for England” means a water resources management plan prepared by a water undertaker whose area is wholly or mainly in England.]

**Textual Amendments**

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003](#)

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(c. 37), ss. 62, 105(3); S.I. 2004/2528, art. 2(j) (with art. 4); S.I. 2005/2714, art. 2(i) (with Sch. paras. 6, 8); S.I. 2006/984, art. 2(q) (with art. 3, Sch.); S.I. 2007/1021, art. 2(a)  
**F12** S. 37AA inserted (14.7.2014) by Water Act 2014 (c. 21), ss. 27(3), 94(2)(g)

### **37B Water resources management plans: publication and representations**

- (1) A water undertaker shall—
  - (a) send a draft water resources management plan to the Secretary of State;
  - (b) state whether it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person); and
  - (c) give the Secretary of State the name of each such other person and his address for service of a notice under subsection (2)(a) below.
- (2) If the water undertaker states that it so appears in relation to any such information, the Secretary of State shall—
  - (a) if the person to whom or to whose business the information relates is not the water undertaker, give that person notice that the information is included in a draft water resources management plan and, unless subsection (10) below applies, is required to be published under this section; and
  - (b) give each person (including the water undertaker) to whom any such information relates a reasonable opportunity—
    - (i) of objecting to the publication of the information relating to him on the ground that it is commercially confidential; and
    - (ii) of making representations to the Secretary of State for the purpose of justifying any such objection,and shall determine, taking any objections and representations under paragraph (b) into account, whether the information is or is not commercially confidential.
- (3) A water undertaker shall—
  - (a) (subject to subsection (10) below) publish the draft water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it;
  - (b) publish with it a statement—
    - (i) whether any information has been excluded from the published draft plan by virtue of subsection (10) below and, if it has, the general nature of that information; and
    - (ii) that any person may make representations in writing about the plan to the Secretary of State before the end of a period specified in the statement; and
  - (c) send a copy of the published draft plan and accompanying statement to such persons (if any) as may be prescribed.
- (4) The Secretary of State shall send to the water undertaker a copy of any representations he receives following publication of the draft plan under subsection (3) above and shall give it a reasonable period of time within which to comment on the representations.
- (5) The Secretary of State may in regulations prescribe how such representations and any comments by the water undertaker on them are to be dealt with.
- (6) Regulations under subsection (5) above—

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- (a) may provide for the Secretary of State to cause an inquiry or other hearing to be held in connection with the draft water resources management plan; and
  - (b) if they do so provide, may provide for subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) to apply with prescribed modifications to such an inquiry or hearing as they apply to inquiries under that section.
- (7) The Secretary of State may direct a water undertaker that its water resources management plan must differ from the draft sent to him under subsection (1) above in ways specified in his direction, and (subject to subsection (9) below) it shall be the duty of the water undertaker to comply with the direction.
- (8) The water undertaker shall—
- (a) (subject to subsection (10) below) publish the water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it; and
  - (b) publish with it a statement whether any information has been excluded from the published plan by virtue of subsection (10) below and, if it has, the general nature of that information.
- (9) If the water undertaker considers that publishing a water resources management plan complying with a direction under subsection (7) above would mean including in the published plan any information (other than any information in relation to which the Secretary of State has already made a determination under subsection (2) above) which might be commercially confidential (as regards itself or another person)—
- (a) the water undertaker shall send the Secretary of State a notice saying so, and giving the Secretary of State the name of any such other person and his address for service of a notice under subsection (2)(a) above as applied by paragraph (b) below; and
  - (b) subsection (2) above shall apply in relation to that information as it applies in relation to the information referred to there;
- and the Secretary of State may either confirm his direction under subsection (7) above (which is to be treated as a new direction under subsection (7)) or revoke the previous such direction (or the previous one so treated) and give a new one.
- (10) The published version of a draft water resources management plan published under subsection (3)(a) above, and a water resources management plan published under subsection (8)(a) above, shall exclude any information which the Secretary of State—
- (a) has determined under subsection (2) above (or that subsection as applied by subsection (9) above) is commercially confidential; or
  - (b) directs the water undertaker to exclude on the ground that it appears to him that its publication would be contrary to the interests of national security.
- (11) Any steps to be taken by a water undertaker under this section shall be completed by such time or within such period as the Secretary of State may direct.

#### Textual Amendments

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\)](#), [ss. 62, 105\(3\)](#); [S.I. 2004/2528, art. 2\(j\)](#) (with [art. 4](#)); [S.I. 2005/2714, art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); [S.I. 2006/984, art. 2\(q\)](#) (with [art. 3, Sch.](#)); [S.I. 2007/1021, art. 2\(a\)](#)

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#### **Modifications etc. (not altering text)**

- C7** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672, Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\), ss. 100\(3\) \(7\), 105\(3\)](#); [S.I. 2004/2528, art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714, art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021, art. 2\(c\)](#))

### **37C Water resources management plans: provision of information**

- (1) It shall be the duty of each [<sup>F13</sup>water supply licensee] to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its water resources management plan.
- (2) In the event of any dispute between a water undertaker and a [<sup>F13</sup>water supply licensee] as to the reasonableness of the water undertaker's request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.
- (3) For the purposes of paragraph (b) of section 37B(1) above, the water undertaker shall identify in its statement under that paragraph any information—
  - (a) provided by a [<sup>F13</sup>water supply licensee] pursuant to subsection (1) above; and
  - (b) contained in the water undertaker's draft water resources management plan, which the [<sup>F13</sup>water supply licensee] has (at the time of providing it to the water undertaker) specifically identified as being, in the [<sup>F14</sup>water supply licensee's] opinion, commercially confidential.
- (4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.
- (5) In subsection (4) above—
  - (a) “unpublished information” means confidential information which—
    - (i) is provided to the water undertaker by a [<sup>F13</sup>water supply licensee] under this section;
    - (ii) relates to the affairs of any individual or to any particular business; and
    - (iii) by virtue of section 37B above, is not published;
  - (b) “the other consolidation Acts” has the same meaning as in section 206 below.

#### **Textual Amendments**

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\), ss. 62, 105\(3\)](#); [S.I. 2004/2528, art. 2\(j\)](#) (with [art. 4](#)); [S.I. 2005/2714, art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); [S.I. 2006/984, art. 2\(q\)](#) (with [art. 3, Sch.](#)); [S.I. 2007/1021, art. 2\(a\)](#))
- F13** Words in s. 37C substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 48\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F14** Words in s. 37C(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 48\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

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**Modifications etc. (not altering text)**

- C8** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, Sch. 2 (as amended by Water Act 2003 (c. 37), ss. 100(3) (7), 105(3); S.I. 2004/2528, art. 2(s) (with savings in art. 4); S.I. 2005/2714, art. 2(k) (with Sch. 2 para. 8); S.I. 2007/1021, art. 2(c)

**37D Water resources management plans: supplementary**

- (1) Directions given under section 37A [<sup>F15</sup> 37AA] or 37B above may be—
    - (a) general directions applying to all water undertakers; or
    - (b) directions applying only to one or more water undertakers specified in the directions,
 and shall be given by an instrument in writing.
  - (2) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.
  - (3) The duties of—
    - (a) a water undertaker under sections 37A to 37C above and under this section; and
    - (b) a [<sup>F16</sup>water supply licensee] under section 37C above,
 shall be enforceable by the Secretary of State under section 18 above.
- [ The Minister may by order made by statutory instrument amend the period for the <sup>F17</sup>(4) time being specified in section 37A(6)(c).
- (5) In subsection (4), “the Minister” means—
    - (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
    - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.
  - (6) A statutory instrument containing an order made by the Secretary of State under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.
  - (7) A statutory instrument containing an order made by the Welsh Ministers under subsection (4) is subject to annulment in pursuance of a resolution of the Assembly.
  - (8) Subsection (9) applies in relation to a statutory instrument containing both—
    - (a) an order made by the Secretary of State under subsection (4), and
    - (b) an order made by the Welsh Ministers under subsection (4).
  - (9) If in accordance with subsection (6) or (7) (negative resolution procedure)—
    - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
    - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
 the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.]]



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- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\)](#), [ss. 62](#), 105(3); [S.I. 2004/2528](#), [art. 2\(j\)](#) (with [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); [S.I. 2006/984](#), [art. 2\(q\)](#) (with [art. 3](#), [Sch.](#)); [S.I. 2007/1021](#), [art. 2\(a\)](#)
- F15** Word in s. 37D(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 27\(4\)](#), 94(2)(g)
- F16** Words in s. 37D(3)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 49](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F17** S. 37D(4)-(9) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(3\)](#), 94(2)(g)

### Modifications etc. (not altering text)

- C9** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672](#), [Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\)](#), [ss. 100\(3\) \(7\)](#), 105(3); [S.I. 2004/2528](#), [art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021](#), [art. 2\(c\)](#))

## 38 Standards of performance in connection with water supply.

- (1) For the purpose-
- of facilitating the determination of the extent to which breaches of the obligations imposed by the following provisions of this Part are to amount to breaches of the duty imposed by section 37 above; or
  - of supplementing that duty by establishing overall standards of performance in relation to that duty,
- the Secretary of State may, in accordance with section 39 below, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Act as breaches of that duty.
- (2) The Secretary of State may, in accordance with section 39 below, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in his opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) above may provide that if a water undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2) above, regulations under that subsection may—
- include in a standard of performance a requirement for a water undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
  - provide for any dispute under the regulations to be referred by either party to the dispute to the Director;
  - make provision for the procedure to be followed in connection with any such reference and for the Director's determination on such a reference to be enforceable in such manner as may be prescribed;
  - prescribe circumstances in which a water undertaker is to be exempted from requirements of the regulations.

*Status: Point in time view as at 01/04/2016.*

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- <sup>F18</sup>[(5) Where the Director determines any dispute in accordance with regulations under this section he shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.]

#### Textual Amendments

- F18** S. 38(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para. 18](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I

#### [38A <sup>F19</sup>Information with respect to levels of performance.

- (1) The Director shall from time to time collect information with respect to—
  - (a) the compensation paid by water undertakers under regulations under section 38(2) above; and
  - (b) the levels of overall performance achieved by water undertakers in connection with the provision of water supplies.
- (2) At such times as the Director may direct, each water undertaker shall give the following information to the Director—
  - (a) as respects each standard prescribed by regulations under section 38(2) above, the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
  - (b) as respects each standard established by regulations under section 38(1)(b) above, such information with respect to the level of performance achieved by the undertaker as may be so specified.

[ The requirements in subsections (2) and (2A) are enforceable by the Authority under <sup>F20</sup>(3) section 18.]

- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as it may appear to him expedient to give to customers or potential customers of water undertakers.
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—
  - (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.]

#### Textual Amendments

- F19** S. 38A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s.27](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F20** S. 38A(3) substituted (1.1.2015 for specified purposes) by [Water Act 2014 \(c. 21\)](#), [ss. 29\(5\), 94\(3\)](#); [S.I. 2014/3320](#), art. 2(2)(a)

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### **[<sup>F21</sup>38B Publication of statistical information about complaints**

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of water undertakers or [<sup>F22</sup>water supply licensees] and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to water undertakers or [<sup>F23</sup>water supply licensees] (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.]

#### **Textual Amendments**

- F21** S. 38B inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 45(1)**, 105(3); S.I. 2005/2714, **art. 2(e)** (with [Sch. para. 8](#))
- F22** Words in s. 38B(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 50(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F23** Words in s. 38B(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 50(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

### **39 Procedure for regulations under section 38.**

- [<sup>F24</sup>(A1) The Secretary of State may make regulations under section 38 above—
- (a) on an application by the Authority, in accordance with subsections (1) to (3) below; or
  - (b) otherwise than on such an application, in accordance with subsections (4) to (8) below.]
- (1) [<sup>F25</sup>Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 38 above if—
- <sup>F26</sup>(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—
    - (i) on every water undertaker specified in the application;<sup>F27</sup> . . .
    - (ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;]
    - <sup>F28</sup>(iii) on the Council; and
    - (iv) on such other persons or bodies as the Secretary of State may consider appropriate;]
  - (c) such period as the Secretary of State considers appropriate has been allowed for the making—
    - (i) by the Director; and
    - (ii) by any affected water undertaker [<sup>F29</sup>or person or body on whom a copy of the application has been served under paragraph [<sup>F30</sup>(b)] above],of representations or objections with respect to the Director’s proposals and any modifications proposed by the Secretary of State; and
  - (d) the Secretary of State has considered [<sup>F31</sup>the summary mentioned in subsection (2)(bb) below,] the Director’s reasons for his proposals and every

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representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.

- <sup>F32</sup>[(1A) Before making an application to the Secretary of State under this section the Director shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.]
- (2) An application made by the Director to the Secretary of State complies with this subsection if it—
- (a) sets out [<sup>F33</sup>the Authority’s proposals for the making of] regulations under section 38 above;
  - (b) specifies the water undertaker or undertakers in relation to which it is proposed [<sup>F34</sup>the regulations] should apply
- <sup>F35</sup>[(bb) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;] ; and
- (c) summarises the Director’s reasons for his proposals.
- (3) The Secretary of State shall not make any regulations [<sup>F36</sup>on an application by the Authority under this section] except where—
- (a) the only provisions of the regulations are [<sup>F37</sup>those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority’s application or to those proposals] with such modifications as the Secretary of State considers appropriate; and
  - (b) each of the modifications (if any) of the Director’s proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
    - (i) to the Director,<sup>F38</sup> . . .
    - (ii) to any water undertaker appearing to the Secretary of State to be likely to be affected by the modifications [<sup>F39</sup>and
    - (iii) to any person or body on whom a copy of the Authority’s application was served under subsection (1)(b) above.]
- <sup>F40</sup>(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 38 above only if he considers—
- (a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or
  - (b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.
- (5) Before making regulations under section 38 above by virtue of subsection (4) above, the Secretary of State shall—
- (a) give notice of his proposals;
  - (b) consider the results of the research carried out in accordance with subsection (7) below; and
  - (c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.
- (6) A notice under subsection (5)(a) above must—
- (a) summarise the Secretary of State’s reasons for his proposals;

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- (b) specify the water undertaker or undertakers in relation to which it is proposed the regulations should apply; and
  - (c) specify the period within which objections or representations with respect to the proposals may be made.
- (7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.
- (8) A notice under subsection (5)(a) above shall be given by serving a copy on—
- (a) the Authority;
  - (b) the Council;
  - (c) every water undertaker to which the regulations will apply;
  - (d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and
  - (e) such other persons or bodies as the Secretary of State may consider appropriate.]

#### Textual Amendments

- F24** S. 39(A1) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 41\(2\)](#), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F25** S. 39(1): words substituted (1.4.2005) for para. (a) and preceding words by virtue of [Water Act 2003 \(c. 37\)](#), [ss. 41\(3\)\(a\)](#), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F26** S. 39(1)(b) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para. 19\(2\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F27** Word in s. 39(1)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 41\(3\)\(b\)](#), 101(2), 105(3), [Sch. 9 Pt. 2](#); S.I. 2005/968, [art. 2\(h\)\(n\)\(i\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F28** S. 39(1)(b)(iii)(iv) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 41\(3\)\(b\)](#), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F29** Words in s. 39(1)(c)(ii) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para. 19\(3\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F30** Words in s. 39(1)(c)(ii) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 41\(3\)\(c\)](#), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F31** Words in s. 39(1)(d) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(2); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F32** S. 39(1A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(3); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F33** Words in s. 39(2)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 41\(4\)\(a\)](#), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F34** Words in s. 39(2)(b) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 41\(4\)\(b\)](#), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F35** S. 39(2)(bb) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(4); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F36** Words in s. 39(3) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 41\(5\)\(a\)](#), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F37** Words in s. 39(3)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 41\(5\)\(b\)](#), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)

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- F38** Word in s. 39(3)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 41(5)(c), 105(3), 101(2), [Sch. 9 Pt. 2](#); S.I. 2005/968, [art. 2\(h\)\(n\)\(i\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F39** S. 39(3)(b)(iii) and preceding word inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 41(5)(c), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)
- F40** S. 39(4)-(8) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 41(6), 105(3); S.I. 2005/968, [art. 2\(h\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)

### [<sup>F41</sup>39ZA Procedure for regulations under section 38ZA

- (1) Section 39 applies for the purposes of making regulations under section 38ZA as it applies for the purposes of making regulations under section 38.
- (2) In the application of section 39 by virtue of subsection (1)—
  - (a) a reference to a water undertaker is to be treated as a reference to a water supply licensee, and
  - (b) a reference to the Secretary of State is to be treated as a reference to the Minister (as defined in section 38ZA(6)).
- (3) Regulations under section 38ZA are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under section 38ZA is subject to annulment in pursuance of a resolution of—
  - (a) either House of Parliament, in the case of regulations made by the Secretary of State;
  - (b) the Assembly, in the case of regulations made by the Welsh Ministers.
- (5) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 38ZA as it applies to regulations made by the Secretary of State.]

#### Textual Amendments

- F41** S. 39ZA inserted (15.7.2015) by [Water Act 2014 \(c. 21\)](#), ss. 29(7), 94(3); S.I. 2015/1469, [art. 2\(c\)](#) (with [art. 5\(1\)\(5\)](#))

#### Modifications etc. (not altering text)

- C10** S. 39ZA(2)(a) modified (temp.) (1.7.2015) by [The Water Act 2014 \(Commencement No. 4 and Transitional Provisions\) Order 2015 \(S.I. 2015/1469\)](#), [art. 5\(1\)\(5\)](#)

### [39A <sup>F42</sup>Information to be given to customers about overall performance.

- (1) Each water undertaker shall, in such form and manner and with such frequency as the Director may direct, take steps to inform its customers [<sup>F43</sup>, and, if the direction so specifies, [<sup>F44</sup>water supply licensees] using the undertaker's supply system for the purpose of supplying water to the premises of customers or those customers,] of—
  - (a) the standards of overall performance established under section 38(1)(b) above which are applicable to that undertaker; and
  - (b) that undertaker's level of performance as respects each of those standards.

[ Each water supply licensee must, in such form and manner and with such frequency <sup>F45</sup>(1A) as the Authority may direct, take steps to inform the licensee's customers of—

- (a) the standards of overall performance established under section 38ZA(1) which are applicable to that licensee;

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- (b) that licensee's level of performance as regards those standards.
- (1B) The Authority may direct that the requirement in subsection (1A) is not to apply to such water supply licensees as may be specified in the direction.]
- (2) In giving [<sup>F46</sup>a direction under subsection (1) or (1A)] , the Director shall not specify a frequency of less than once in every period of twelve months.
- [ The [<sup>F48</sup>water supply licensees] referred to in subsection (1) above shall, if the
- <sup>F47</sup>(2A) Authority so directs, pass on the information about the matters mentioned in that subsection to their customers.
- (2B) In subsection (1) above, the reference to the water undertaker's supply system shall be construed in accordance with [<sup>F49</sup>section 17B] above.]
- (3) The duty of a water undertaker [<sup>F50</sup>or [<sup>F51</sup>water supply licensee]] to comply with this section shall be enforceable by the Director under section 18 above.]

#### Textual Amendments

- F42** S. 39A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 28](#); Competition and Service (Utilities) Act. 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F43** Words in s. 39A(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 13\(2\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with Sch. para. 8)
- F44** Words in s. 39A(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(2\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F45** S. 39A(1A)(1B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(3\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F46** Words in s. 39A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(4\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F47** S. 39A(2A)(2B) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 13\(3\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with Sch. para. 8)
- F48** Words in s. 39A(2A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(2\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F49** Words in s. 39A(2B) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(5\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F50** Words in s. 39A(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 13\(4\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with Sch. para. 8)
- F51** Words in s. 39A(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 51\(6\)](#); S.I. 2016/465, [art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

#### [<sup>F52</sup>39B Drought plans: preparation and review

- (1) It shall be the duty of each water undertaker to prepare [<sup>F53</sup>, publish] and maintain a drought plan.
- (2) A drought plan is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders or drought permits under Chapter 3 of Part 2 of the Water Resources Act 1991.

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- (3) The duties referred to in subsection (2) above include in particular those imposed under or by virtue of—
- (a) section 37 above;
  - (b) sections 67 to 69 below.
- (4) A drought plan shall address, in particular, the following matters—
- (a) what measures the water undertaker might need to take to restrain the demand for water within its area;
  - (b) what measures the water undertaker might need to take to obtain extra water from other sources (also taking into account for that purpose the introduction of water into the undertaker's supply system by or on behalf of [<sup>F54</sup>water supply licensees]);
  - (c) how the water undertaker will monitor the effects of the drought and of the measures taken under the drought plan;
  - (d) such other matters as the Secretary of State may specify in directions.
- (5) Section 37B above (water resources management plans: publication and representations), including any power in that section to make regulations or give directions, applies in relation to drought plans (including revised plans) as it applies in relation to water resources management plans.
- (6) Each water undertaker shall review (or further review) its drought plan and prepare [<sup>F55</sup>and publish] a revised plan in each of the following cases—
- (a) if there is a material change of circumstances;
  - (b) if directed to do so by the Secretary of State;
  - (c) in any event, not later than the end of the period of [<sup>F56</sup>five years] beginning with the date when the plan (or revised plan) was last published in accordance with section 37B(8)(a) above as applied by subsection (5) above,
- and shall follow the procedure in section 37B above as applied by subsection (5) above (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).
- (7) Before preparing its drought plan (including a revised plan), the water undertaker shall consult—
- (a) the Environment Agency [<sup>F57</sup>, if the plan (or revised plan) would affect water resources in England;]
  - <sup>F58</sup>(aa) [ the NRBW, if the plan (or revised plan) would affect water resources in Wales;]
  - (b) the Authority;
  - (c) the Secretary of State; and
  - (d) any [<sup>F59</sup>water supply licensee] which supplies water to premises in the undertaker's area via the undertaker's supply system.
- (8) The Secretary of State may give directions specifying the form which a drought plan must take.
- (9) Directions given under this section (including directions given under section 37B above as applied by subsection (5) above) may be—
- (a) general directions applying to all water undertakers; or
  - (b) directions applying only to one or more water undertakers specified in the directions,



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and shall be given by an instrument in writing.

(10) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.

[<sup>F60</sup>(11) Before giving a direction under subsection (6)(b), the Secretary of State shall consult—  
(a) the Environment Agency, if the revised plan would affect water resources in England, and  
(b) the NRBW, if the revised plan would affect water resources in Wales.

(11A) Before giving a direction under subsection (6)(b), the Welsh Ministers shall consult—  
(a) the NRBW, if the revised plan would affect water resources in Wales, and  
(b) the Environment Agency, if the revised plan would affect water resources in England.]

(12) The duty of a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.

#### Textual Amendments

- F52** Ss. 39B, 39C inserted (1.10.2004 for specified purposes and otherwise 1.10.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 63, 105\(3\)](#); [S.I. 2004/2528](#), [art. 2\(j\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(j\)](#) (with [Sch. 2 para. 8](#))
- F53** Word in s. 39B(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(a\)](#), 94(2)(g)
- F54** Words in s. 39B(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 52\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F55** Words in s. 39B(6) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(b\)\(i\)](#), 94(2)(g)
- F56** Words in s. 39B(6)(c) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(b\)\(ii\)](#), 94(2)(g)
- F57** Words in s. 39B(7)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(2\)\(a\)](#) (with [Sch. 7](#))
- F58** S. 39B(7)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(2\)\(b\)](#) (with [Sch. 7](#))
- F59** Words in s. 39B(7)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 52\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F60** S. 39B(11)(11A) substituted for s. 39B(11) (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(3\)](#) (with [Sch. 7](#))

#### Modifications etc. (not altering text)

- C11** S. 39B modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672](#), [Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\)](#), [ss. 100\(3\)\(7\)](#), [105\(3\)](#); [S.I. 2004/2528](#), [art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021](#), [art. 2\(c\)](#))

### 39C Drought plans: provision of information

(1) It shall be the duty of each [<sup>F61</sup>water supply licensee] to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its drought plan.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In the event of any dispute between a water undertaker and a <sup>F61</sup>water supply licensee] as to the reasonableness of the water undertaker’s request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.
- (3) For the purposes of paragraph (b) of section 37B(1) above as applied by section 39B(5) above, the water undertaker shall identify in its statement under that paragraph any information—
- (a) provided by a <sup>F61</sup>water supply licensee] pursuant to subsection (1) above; and
  - (b) contained in the water undertaker’s draft drought plan, which the <sup>F61</sup>water supply licensee] has (at the time of providing it to the water undertaker) specifically identified as being, in the <sup>F62</sup>water supply licensee's] opinion, commercially confidential.
- (4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.
- (5) In subsection (4) above—
- (a) “unpublished information” means confidential information which—
    - (i) is provided to the water undertaker by a <sup>F61</sup>water supply licensee] under this section;
    - (ii) relates to the affairs of any individual or to any particular business; and
    - (iii) by virtue of section 37B above as applied by section 39B(5) above, is not published;
  - (b) “the other consolidation Acts” has the same meaning as in section 206 below.
- (6) The duties of a <sup>F61</sup>water supply licensee] and a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.]

#### Textual Amendments

- F52** Ss. 39B, 39C inserted (1.10.2004 for specified purposes and otherwise 1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 63**, 105(3); S.I. 2004/2528, **art. 2(j)** (with savings in **art. 4**); S.I. 2005/2714, **art. 2(j)** (with Sch. 2 para. 8)
- F61** Words in s. 39C substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 53(a)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(k)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F62** Words in s. 39C(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 53(b)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(k)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

#### Modifications etc. (not altering text)

- C12** S. 39C modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, **Sch. 2** (as amended by [Water Act 2003 \(c. 37\)](#), **ss. 100(3)(7)**, 105(3); S.I. 2004/2528, **art. 2(s)** (with savings in **art. 4**); S.I. 2005/2714, **art. 2(k)** (with **Sch. 2 para. 8**); S.I. 2007/1021, **art. 2(c)**)

#### <sup>F63</sup>39D Drought plans: supplementary

- (1) The Minister may by order made by statutory instrument amend the period for the time being specified in section 39B(6)(c).

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In subsection (1), “the Minister” means—
- (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.
- (3) A statutory instrument containing an order made by the Secretary of State under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing an order made by the Welsh Ministers under subsection (1) is subject to annulment in pursuance of a resolution of the Assembly.
- (5) Subsection (6) applies in relation to a statutory instrument containing both—
- (a) an order made by the Secretary of State under subsection (1), and
  - (b) an order made by the Welsh Ministers under subsection (1).
- (6) If in accordance with subsection (3) or (4) (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
  - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
- the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.]

#### Textual Amendments

**F63** S. 39D inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), ss. **28(5)**, 94(2)(g)

## CHAPTER II

### SUPPLY DUTIES

#### *Major supplies*

#### <sup>F64</sup>**40 Bulk supplies.**

- (1) This section applies where—
- (a) a qualifying person requests a water undertaker to provide a supply of water in bulk to the qualifying person, or
  - (b) a water undertaker proposes such an arrangement;
- and references in this section to the supplier are references to the water undertaker who is to provide the supply of water.
- (2) In this section “qualifying person” means—
- (a) a water undertaker;
  - (b) a person who has made an application for an appointment or variation under section 8 which has not been determined.

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- (3) On the application of the qualifying person or the supplier, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the supplier should give a supply of water in bulk to the qualifying person, and
  - (b) if the Authority is satisfied that the supplier and qualifying person cannot reach agreement within a reasonable time,
- by order require the supplier to give and the qualifying person to take a supply of water in bulk for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency, in particular about whether the proposed supply of water would secure an efficient use of water resources, taking into account the effect on the environment of the proposed supply.
- (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the supplier and the qualifying person.
- (6) If the Authority makes an order under subsection (3) that affects a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
- (a) the person becomes a water undertaker for the area specified in the order, or
  - (b) the person becomes a water undertaker for an area that includes the area specified in the order (in the case of a water undertaker applying for a variation).
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the supply of water in bulk by a water undertaker to a qualifying person, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement for the supply of water in bulk by a water undertaker to a qualifying person, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the water supply industry;
  - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (10) In this section and section 40A “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 40A(1) which would result in, or which would vary or terminate, a bulk supply agreement, means—
- (a) the Environment Agency, in a case where all parties to the bulk supply agreement are or would be—
    - (i) a water undertaker whose area is wholly in England, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the NRBW, in a case where all parties to the bulk supply agreement are or would be—
    - (i) a water undertaker whose area is wholly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) both the Environment Agency and the NRBW, in any other case.
- (11) In this section and sections 40A to 40J “bulk supply agreement” means an agreement with one or more water undertakers for the supply of water in bulk and includes—
- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
  - (b) any agreement which has been varied by order under section 40A(1).]

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### [<sup>F64</sup>40A Variation and termination of bulk supply agreements.

- (1) On the application of any party to a bulk supply agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, that the bulk supply agreement should be varied or terminated, and
  - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement within a reasonable time,
- by order vary or terminate the bulk supply agreement.
- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency, in particular about whether the proposed variation or termination of the bulk supply agreement would secure an efficient use of water resources, taking into account the effect on the environment of what is proposed.
- (3) If an order under subsection (1) is made in relation to a bulk supply agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect (as the case may be).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a bulk supply agreement, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (6) Subsection (5)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement to vary or terminate a bulk supply agreement, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement in question and to the desirability of—
- (a) facilitating effective competition within the water supply industry;
  - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.
- (8) In this section and sections 40B to 40J—
- “qualifying person” has the meaning given by section 40;
- “supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.]

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### [<sup>F64</sup>40B Codes in respect of bulk supply agreements

- (1) The Authority may issue one or more codes in respect of bulk supply agreements.
- (2) A code may make provision about—
- (a) procedures in connection with making a bulk supply agreement;
  - (b) procedures in connection with varying or terminating a bulk supply agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 40(3) or 40A(1);
  - (d) the terms and conditions of a bulk supply agreement, including terms as to the duration of such an agreement;
  - (e) principles for determining the terms and conditions that should or should not be incorporated into a bulk supply agreement;

*Status: Point in time view as at 01/04/2016.*

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- (f) the steps to be taken by the Authority in determining whether a person is complying with a code.
- (3) A code must include provision requiring persons proposing to make, vary or terminate a bulk supply agreement to consult the appropriate agency.
- (4) If the Authority considers that a water undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
- (6) It is the duty of a water undertaker to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make different provision for different persons or different descriptions of person.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to bulk supply agreements made before the revised code comes into force.
- (10) In this section “the appropriate agency”, in relation to a bulk supply agreement or proposed bulk supply agreement, means the body that would be consulted by the Authority under section 40(4) or 40A(2) if an order under section 40(3) or 40A(1) were being considered in relation to the agreement or proposed agreement.

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773, art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

### 40C Codes under section 40B: procedure

- (1) Before issuing a code under section 40B, the Authority must—
  - (a) prepare a draft of the proposed code under section 40B;
  - (b) consult the appropriate agency;
  - (c) consult such other persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed code.
- (3) Before a code under section 40B prepared by the Authority is issued, the Minister may direct the Authority—
  - (a) not to issue the code, or
  - (b) to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In subsection (3) “the Minister” means—
  - (a) the Secretary of State, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (i) a water undertaker whose area is wholly or mainly in England, or
  - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to bulk supply agreements to which—
    - (i) a person falling within paragraph (a)(i) or (ii) is party, and
    - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such bulk supply agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such bulk supply agreements as are referred to in that paragraph on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code prepared by the Authority in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) In this section “the appropriate agency” means—
- (a) the Environment Agency, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(a)(i) or (ii);
  - (b) the NRBW, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(b)(i) or (ii);
  - (c) both the Environment Agency and the NRBW, in any other case.
- (10) This section is subject to section 40D.

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### **40D Codes under section 40B: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue a revised code under section 40B and, in the view of the Authority, the revision or each of the revisions proposed to be made is—



*Status: Point in time view as at 01/04/2016.*

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- (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 40C does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

#### **Textual Amendments**

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### **40E Rules about charges for the supply of water in bulk**

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a bulk supply agreement.
- (2) The rules may in particular make provision about—
  - (a) what types of charge may be imposed;
  - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
  - (c) principles for determining what types of charge may or may not be imposed;
  - (d) principles for determining the amount of any charge that may be imposed;
  - (e) publication of the charges that may be imposed.
- (3) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a water undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—
  - (a) make different provision for different water undertakers or different descriptions of water undertaker;
  - (b) make different provision for different purposes;
  - (c) make provision subject to exceptions.
- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) The Authority must issue revised rules if—
- (a) guidance is issued under section 40I, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (8) Revised rules may include provision for applying any of their revisions to bulk supply agreements made before the revised rules come into effect.

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### 40F Rules under section 40E: provision about the reduction of charges

- (1) Rules under section 40E may provide for the reduction of charges payable for a supply of water under a bulk supply agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
- (a) specify conditions that affect any party to a bulk supply agreement;
  - (b) require that steps be taken for the purpose of reducing or managing water consumption;
  - (c) specify conditions about reducing charges payable by a person who—
    - (i) is not party to the agreement, and
    - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition falling within paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the water undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
- (a) make provision as to the content of the notice;
  - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
- (a) the provision of the rules that brings about the reduction in the charge;
  - (b) the amount of the charge, with and without the reduction;
  - (c) the period for which the reduction has effect.

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### 40G Rules under section 40E: procedure

- (1) Before issuing rules under section 40E, the Authority must—

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) prepare a draft of the proposed rules, and
  - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 40I in making rules under section 40E.
- (4) Before rules under section 40E prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
  - (a) the Secretary of State, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in England, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to bulk supply agreements to which—
    - (i) a person falling within paragraph (a)(i) or (ii) is party, and
    - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (7) This section is subject to section 40H.

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### **40H Rules under section 40E: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 40E and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 40G does not apply to the proposed revised rules.

*Status: Point in time view as at 01/04/2016.*

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- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
  - (a) that period of 14 days expires, or
  - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
 whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised rules, and
  - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 40G.

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### 40I Rules under section 40E: guidance

- (1) The Minister may issue guidance as to the content of rules under section 40E.
- (2) Before issuing the guidance, the Minister must—
  - (a) prepare a draft of the proposed guidance;
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.

*Status: Point in time view as at 01/04/2016.*

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- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
- (a) the Secretary of State, in relation to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in England, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, in relation to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to bulk supply agreements to which—
    - (i) a person falling within paragraph (a)(i) or (ii) is party, and
    - (ii) a person falling within paragraph (b)(i) or (ii) is party.

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### 40J Duty to provide information about bulk supplies

- (1) A supplier under a bulk supply agreement must provide such information as the appropriate agency may request in relation to water supplied under the agreement.
- (2) The requirement in subsection (1) is enforceable by the Authority under section 18.
- (3) In subsection (1) “the appropriate agency” means the body that would be consulted by the Authority under section 40A(2) if the agreement were to be varied or terminated by an order under section 40A(1).]

#### Textual Amendments

**F64** Ss. 40-40J substituted for ss. 40, 40A (6.4.2015 for the insertion of s. 40J) by [Water Act 2014 \(c. 21\)](#), [ss. 8\(1\), 94\(3\)](#) (with [s. 8\(2\)](#)); [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

#### 41 Duty to comply with water main requisition.

- (1) It shall be the duty of a water undertaker (in accordance with section 44 below) to provide a water main to be used for providing such supplies of water to premises in a particular locality in its area as (so far as those premises are concerned) are sufficient for domestic purposes, if-

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- (a) the undertaker is required to provide the main by a notice served on the undertaker by one or more of the persons who under subsection (2) below are entitled to require the provision of the main for that locality;
  - (b) the premises in that locality to which those supplies would be provided by means of that main are—
    - (i) premises consisting in buildings or parts of buildings; or
    - (ii) premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out;
 and
  - (c) the conditions specified in section 42 below are satisfied in relation to that requirement.
- (2) Each of the following persons shall be entitled to require the provision of a water main for any locality, that is to say—
- (a) the owner of any premises in that locality;
  - (b) the occupier of any premises in that locality;
  - (c) any local authority within whose area the whole or any part of that locality is situated;
  - [<sup>F65</sup>(ca) where the whole or any part of that locality is situated within a Mayoral development area, the Mayoral development corporation;]
  - (d) where the whole or any part of that locality is situated in a new town, within the meaning of the <sup>M1</sup>New Towns Act 1981—
    - (i) the [<sup>F66</sup>new towns residuary body]; and
    - (ii) <sup>F67</sup> . . . the development corporation for the new town, <sup>F67</sup> . . . ;
 and
  - (e) where the whole or any part of that locality is situated within an area designated as an urban development area under Part XVI of the <sup>M2</sup>Local Government, Planning and Land Act 1980, the urban development corporation.
- (3) The duty of a water undertaker under this section to provide a water main shall be owed to the person who requires the provision of the main or, as the case may be, to each of the persons who joins in doing so.
- (4) Where a duty is owed by virtue of subsection (3) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (5) In this section “local authority”, in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

#### Textual Amendments

- F65** S. 41(2)(ca) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), [Sch. 22 para. 40](#)
- F66** Words in s. 41(2)(d)(i) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), ss. 56, 325, [Sch. 8 para. 56](#); [S.I. 2008/3068](#), [art. 2\(1\)\(w\)](#) (with savings and transitional provisions in [arts. 6-13](#))

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**F67** Words in s. 41(2)(d)(ii) repealed (1.10.1998) by 1998 c. 38, s. 152, **Sch. 18 Pt.IV** (with ss. 137(1), 139(2), 143(2)); S.I. 1998/2244, **art. 4**

#### Marginal Citations

**M1** 1981 c. 64.

**M2** 1980 c. 65.

## 42 Financial conditions of compliance.

- (1) The conditions mentioned in section 41(1)(c) above are satisfied in relation to a requirement for the provision of a water main by a water undertaker if—
  - (a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) below have been given by the person or persons who have required the provision of the main; and
  - (b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under subsection (3) below, may be required to secure his undertakings.
- (2) The undertakings which a water undertaker may require for the purposes of subsection (1) above in respect of any water main are undertakings which—
  - <sup>F68</sup>(a) bind the person or persons mentioned in that subsection to pay to the undertaker either (at the election of such person or persons)—
    - (i) in respect of each of the twelve years following the provision of the main, an amount not exceeding the relevant deficit (if any) for that year on that main; or
    - (ii) following provision of the main, a single amount not exceeding the discounted aggregate deficit on that main; and
  - (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.
- (3) For the purposes of subsection (1)(b) above a person may be required to secure his undertakings in relation to the provision of a water main if—
  - (a) it was by virtue of section 41(2)(a) or (b) above that he required, or joined in requiring, the provision of the main; and
  - (b) he is not a public authority.
- (4) Where for the purposes of subsection (1)(b) above any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—
  - (a) by the undertaker with the approval of the Director; or
  - (b) in default of a determination under paragraph (a) above, by the Director,on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.
- (5) An approval or determination given or made by the Director for the purposes of subsection (4) above—
  - (a) may be given or made in relation to the provision of a particular water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and

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- (b) may be revoked at any time.
- (6) Any dispute between a water undertaker and any other person as to—
- (a) the undertakings or security required by the undertaker for the purposes of this section; or
  - (b) the amount required to be paid in pursuance of any such undertaking, [F69 may be referred to the Authority for determination under section 30A above by either party to the dispute.]
- [F70(7) In this section “relevant deficit” and “discounted aggregate deficit” have the meanings given by sections 43 and 43A below, respectively.]

#### Textual Amendments

- F68** S. 42(2)(a) substituted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 90\(2\)\(5\), 105\(3\); S.I. 2004/641, art. 4\(a\)](#) (with [art. 6, Sch. 3](#))
- F69** Words in s. 42(6) substituted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 90\(3\)\(5\), 105\(3\); S.I. 2004/641, art. 4\(a\)](#) (with [art. 6, Sch. 3](#))
- F70** S. 42(7) substituted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 90\(4\)\(5\), 105\(3\); S.I. 2004/641, art. 4\(a\)](#) (with [art. 6, Sch. 3](#))

### 43 Calculation of “relevant deficit” for the purposes of section 42.

- (1) For the purposes of section 42 above the relevant deficit for any year on a water main is the amount (if any) by which the [F71 relevant revenue in respect of that main for that year is] exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.
- (2) The annual borrowing costs of a loan of the amount required for the provision of a water main is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that main as were not incurred in the provision of additional capacity had been borrowed, by the water undertaker providing the main, on terms—
  - (a) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and
  - (b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined for the purposes of this subsection.
- (3) A determination for the purposes of subsection (2) above shall be made either—
  - (a) by the undertaker with the approval of the Director; or
  - (b) in default of such a determination, by the Director.
- (4) For the purposes of this section the costs reasonably incurred in providing a water main (“the new main”) shall include—
  - (a) the costs reasonably incurred in providing such other water mains and such tanks, service reservoirs and pumping stations as it is necessary to provide in consequence of the provision of the new main; and
  - (b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing [F72 or procuring the provision of] any such additional capacity in



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an earlier main as falls to be used in consequence of the provision of the new main.

[<sup>F73</sup>(5) In subsection (4) above the reference to an earlier main, in relation to the new main, is a reference to any water main which—

- (a) has been provided in pursuance of a water main requisition; or
- (b) has been vested (by virtue of a declaration made under this Chapter) in the water undertaker,

in the period of twelve years immediately before the provision of the new main.]

(6) Any reference in this section to the provision of additional capacity in a water main provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that main as are carried out or done for the purpose of enabling that main to be used for purposes in addition to those for which it is necessary to provide the main in order to comply with the requirement.

[<sup>F74</sup>(7) Any reference in this section to the relevant revenue in respect of a main provided by a water undertaker for any year is—

- (a) in relation to premises connected with the main which are supplied with water by the undertaker, is a reference to so much of the aggregate of any charges payable to the undertaker in respect of services provided in the course of that year as represents charges which—
  - (i) have been imposed by the undertaker in relation to those premises; and
  - (ii) are reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main;
- (b) in relation to premises connected with the main which are supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges made during the course of that year which—
  - (i) are payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and
  - (ii) are reasonably attributable to the use of that main for the purpose of the supplier supplying water to those premises.]

(8) An approval or determination given or made by the Director for the purposes of subsection (2) above—

- (a) may be given or made in relation to the provision of a particular water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and
- (b) may be revoked at any time except in relation to a water main [<sup>F75</sup>in respect of which the conditions referred to in section 42(1) above have already been satisfied.] .

(9) In this section “water main requisition” means—

- (a) a requirement under section 41 above (including, by virtue of paragraph 1 of Schedule 2 to the <sup>M3</sup>Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 40 of the <sup>M4</sup>Water Act 1989);
- (b) a requirement under the provisions of section 36 or 37 of the <sup>M5</sup>Water Act 1945 or of section 29 of Schedule 3 to that Act (water main requisitions); or

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- (c) a requirement under any local statutory provision corresponding to section 41 above or to any of those provisions of that Act of 1945.

#### Textual Amendments

- F71** Words in s. 43(1) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 14\(2\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F72** Words in s. 43(4)(b) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 91\(1\)\(a\)\(4\)](#), 105(3); S.I. 2004/641, [art. 4\(a\)](#) (with [art. 6](#), [Sch. 3](#))
- F73** S. 43(5) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 91\(1\)\(b\)\(4\)](#), 105(3); S.I. 2004/641, [art. 4\(a\)](#) (with [art. 6](#), [Sch. 3](#))
- F74** S. 43(7) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 14\(3\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F75** Words in s. 43(8)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 91\(1\)\(c\)\(4\)](#), 105(3); S.I. 2004/641, [art. 4\(a\)](#) (with [art. 6](#), [Sch. 3](#))

#### Marginal Citations

- M3** 1991 c. 60.  
**M4** 1989 c. 15.  
**M5** 1945 c. 42.

### <sup>F76</sup>43A Calculation of “discounted aggregate deficit” for the purposes of section 42

- (1) For the purposes of section 42 above the discounted aggregate deficit on a water main is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the provision of the main, in each case discounted in accordance with subsection (6) below.
- (2) The estimated relevant deficit for any year is the amount (if any) by which the estimated revenue in respect of the water main for that year would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.
- (3) Subsections (2) to (6), (8) and (9) of section 43 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a water main) shall apply for the purposes of this section as they apply for the purposes of that.
- (4) Any reference in this section to the estimated revenue in respect of a water main for any year—
  - (a) in relation to premises expected to be connected with the main and supplied with water by a water undertaker, is a reference to so much of the aggregate of any charges expected to be payable to the undertaker for the provision of services in the course of that year as would represent charges—
    - (i) imposed by the undertaker in relation to those premises, and
    - (ii) reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main; and
  - (b) in relation to premises expected to be connected with the main and supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges expected to be made during the course of that year as would be—
    - (i) payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and

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- (ii) reasonably attributable to the use of that main for the purpose of the supplier's supplying water to those premises.
- (5) For the purpose of calculating estimated revenue under subsection (4) above, a thing is expected to be the case if, at the time the calculation is made, it is reasonably likely to occur.
- (6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.
- (7) A determination made by the Authority for the purposes of subsection (6) above—
  - (a) may be made in relation to the provision of a particular water main or in relation to the provision of water mains generally; and
  - (b) may be revoked at any time except in relation to a water main in respect of which the conditions referred to in section 42(1) above have already been satisfied.]

#### Textual Amendments

**F76** S. 43A inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 91\(2\)\(4\)](#), [105\(3\)](#); [S.I. 2004/641](#), [art. 4\(a\)](#) (with [art. 6](#), [Sch. 3](#))

#### 44 Determination of completion date and route for requisitioned main.

- (1) A water undertaker shall not be in breach of a duty imposed by section 41 above in relation to any locality unless—
  - (a) the period of three months beginning with the relevant day has expired; and
  - [<sup>F77</sup>(b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable (as the case may be)—
    - (i) service pipes to premises in that locality; or
    - (ii) a water main which is the subject of an agreement under section 51A below (“the self-laid main”),to connect with the main at the place or places determined under subsection (3) below.]
- (2) The period mentioned in subsection (1)(a) above may be extended in any case—
  - (a) by agreement between the water undertaker and the person or persons who required the provision of the main; or
  - (b) where there is a dispute as to whether the period should be extended, by [<sup>F78</sup>the Authority] on a reference under subsection (4) below.
- (3) The places mentioned in subsection (1)(b) above shall be—
  - (a) such places as are determined by agreement between the water undertaker and the person or persons who required the provision of the water main; or
  - (b) in default of agreement, such places as are determined by [<sup>F79</sup>the Authority], on a reference under subsection (4) below, to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question [<sup>F80</sup>, or (as the case may be) the self-laid main,] to connect with the water main.

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- [<sup>F81</sup>(4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.]
- (5) In this section “relevant day”, in relation to a requirement to provide a water main  
<sup>F82</sup> . . . , means the day after whichever is the later of the following, that is to say—
- (a) the day on which the conditions specified in section 42 above are satisfied in relation to the requirement; and
  - [<sup>F83</sup>(b) the day on which the place or places where (as the case may be)—
    - (i) service pipes to premises in the locality in question; or
    - (ii) the self-laid main,
 will connect with the main are determined under subsection (3) above.]

#### Textual Amendments

- F77** S. 44(1)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(a)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6, Sch. 3](#))
- F78** Words in s. 44(2)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(b)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6, Sch. 3](#))
- F79** Words in s. 44(3)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(c)(i)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6, Sch. 3](#))
- F80** Words in s. 44(3)(b) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(c)(ii)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6, Sch. 3](#))
- F81** S. 44(4) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(d)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6, Sch. 3](#))
- F82** Words in s. 44(5) omitted (28.5.2004) and repealed (1.4.2005) by virtue of [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(e)(4)**, 101(2), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(a)** (with [art. 6, Sch. 3](#)); S.I. 2005/968, **art. 2(n)** (with savings in [art. 4, Schs. 1, 2](#))
- F83** S. 44(5)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 91(3)(e)(ii)(4)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6, Sch. 3](#))

### *Domestic connections*

#### 45 Duty to make connections with main.

- (1) Subject to the following provisions of this section and to sections 46 and 47 below, it shall be the duty of a water undertaker (in accordance with section 51 below) to make a connection under this section where the owner or occupier of any premises  
<sup>F84</sup> . . . which—
- (a) consist in the whole or any part of a building; or
  - (b) are premises on which any person is proposing to erect any building or part of a building,
- serves a notice on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker’s water mains.
- [<sup>F85</sup>(1A) In relation to service pipes which do not belong to or fall to be laid by the undertaker—
- (a) subsection (1) above is subject to section 51D(1) below; and
  - (b) any such service pipe which is to vest in the undertaker by virtue of an agreement under section 51A below shall be connected to one of the

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undertaker's water mains subject to and in accordance with the terms of that agreement.]

(2) Where a notice has been served for the purposes of this section, the duty imposed by subsection (1) above shall be a duty, at the expense of the person serving the notice, to make the connection required by the notice if—

- (a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and
- (b) such conditions as the undertaker may have imposed under sections 47 to 50 below have been satisfied;

and, subject to section 51 below, that duty shall arise whether or not the service pipe to which the notice relates has been laid when the notice is served.

(3) A notice for the purposes of this section—

- (a) shall be accompanied or supplemented by all such information as the undertaker may reasonably require; and
- (b) if the notice has effect so that a requirement is imposed on the undertaker by virtue of section 46(4) below, shall set out the matters that have given rise to the imposition of that requirement;

but, subject to section 51(5) below and without prejudice to the effect (if any) of any other contravention of this subsection, a failure to provide information in pursuance of the obligation to supplement such a notice shall not invalidate that notice.

(4) The duty imposed on a water undertaker by this section shall be owed to the person who served the notice by virtue of which the duty arises.

(5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(6) Where a water undertaker carries out any works which it is its duty under this section to carry out at another person's expense, the undertaker shall be entitled to recover from that person an amount equal to the expenses reasonably incurred by the undertaker in carrying out the works.

<sup>F86</sup>[(6A) Any dispute between a water undertaker and any other person as to whether the expenses were incurred reasonably may be referred to the Director for determination under section 30A above by either party to the dispute.]

(7) Nothing in this section or in sections 46 to 51 below shall impose any duty on a water undertaker to connect a service pipe to any premises with a service pipe to any other premises.

(8) In the following provisions of this Chapter a notice served for the purposes of this section is referred to as a connection notice.

#### Textual Amendments

**F84** Words in s. 45(1) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 43(1), 56(7), [Sch. 2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

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- F85** S. 45(1A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 92(2)(7)**, 105(3); S.I. 2004/641, **art. 4(a)** (with [art. 6](#), [Sch. 3](#))
- F86** S. 45(6A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 35(2)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt.II

#### **46 Duty to carry out ancillary works for the purpose of making domestic connection.**

- (1) Where a water undertaker is required to make a connection in pursuance of any connection notice, it shall also be the duty of the undertaker, at the expense of the person serving the notice, to carry out such of the works to which this section applies as need to be carried out before the connection can be made.
- (2) This section applies to the laying of so much of the service pipe to be connected with the water main as it is necessary, for the purpose of making that connection, to lay in a street.
- (3) In a case where—
  - (a) the water main with which the service pipe is to be connected is situated in a street;
  - (b) the premises consisting in the building or part of a building in question together with any land occupied with it abut on the part of the street where the main is situated; and
  - (c) the service pipe to those premises will—
    - (i) enter the premises otherwise than through an outer wall of a building abutting on the street; and
    - (ii) have a stopcock fitted to it by the undertaker in the premises,
 this section applies to the laying of so much of the service pipe as it is necessary, for the purpose of making the required connection, to lay in land between the boundary of the street and that stopcock.
- (4) In a case where the connection notice is served in compliance with a requirement imposed by a notice by a local authority under section 80 below, this section applies to the laying of so much of the service pipe to be connected with a water main in pursuance of the connection notice as it is necessary, for the purpose of making the connection, to lay in land owned or occupied by a person who is certified by that authority—
  - (a) to have unreasonably refused his consent to the laying of the service pipe; or
  - (b) to have sought to make the giving of his consent subject to unreasonable conditions.
- (5) Where a water main is alongside a street and within eighteen metres of the middle of that street, subsections (2) to (4) above shall have effect in relation to the laying, for the purpose of making a connection with that main, of a service pipe to any premises as if the street included so much of the land between the main and the boundary of the street as is not comprised in those premises or in any land occupied with those premises.
- (6) It shall be the duty of any water undertaker making a connection in pursuance of a connection notice to ensure that a stopcock belonging to the undertaker is fitted to the service pipe which is connected.
- (7) Subsections (4) to <sup>F87</sup>(6A)] of section 45 above shall have effect-

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- (a) in relation to any duties which, by virtue of a connection notice, are imposed on a water undertaker by this section; and
  - (b) in relation to any works which, by virtue of the service of such a notice, such an undertaker carries out under this section at another person's expense,
- as they have effect by virtue of that notice in relation to the duty which arises under that section or, as the case may be, to works which the undertaker carries out under that section at another person's expense.
- (8) Subject to subsection (9) below, a water undertaker may comply with any duty under this section to lay a service pipe by laying a water main instead; but nothing in section 45 above or this section shall impose any duty on a water undertaker to lay a water main where it has no power to lay a service pipe.
- (9) Where a water undertaker exercises its power under subsection (8) above to lay a water main instead of a service pipe—
- (a) paragraph (a) of section 51(1) below shall have effect as if any additional time reasonably required by reason of the laying of the main instead of the service pipe were included in the time allowed by that paragraph for the laying of the service pipe; but
  - (b) the expenses recoverable by virtue of section 45(6) and subsection (7) above shall not exceed such amount as it would have been reasonable for the undertaker to have incurred in laying a service pipe instead of the main.

#### Textual Amendments

- F87** Words in s. 46(7) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(3\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

#### 47 Conditions of connection with water main.

- (1) Subject to subsection (3) and sections 48 to 50 below, where the owner or occupier of any premises (“the relevant premises”) serves a connection notice on a water undertaker, the undertaker may make compliance with one or more of the requirements specified in subsection (2) below a condition of its complying with the duties to which it is subject by virtue of that notice.
- (2) The requirements mentioned in subsection (1) above are—
- (a) a requirement that such security as the undertaker may reasonably require has been provided for the discharge of any obligations imposed by virtue of section 45(6) or 46(7)(b) above on the person who served the connection notice;
  - (b) a requirement, in a case where the connection required by the connection notice is necessary as a consequence of a disconnection made by reason of any person's failure to pay any charges, that the person serving the connection notice has paid any amount owed by him to the undertaker—
    - (i) in respect of a supply of water to the relevant premises; or
    - (ii) in respect of expenses [<sup>F88</sup>reasonably]incurred in the making of the disconnection;

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- (c) a requirement that a meter for use in determining the amount of any charges which have been or may be fixed in relation to the relevant premises by reference to volume has been installed and connected either—
  - (i) by the undertaker; or
  - (ii) in accordance with specifications approved by the undertaker;
- (d) a requirement that—
  - <sup>F89</sup>(i) subject to section 51D(1) below, so much of the service pipe to the relevant premises as does not belong to, vest in or fall to be laid by the undertaker; and]
  - (ii) the plumbing of the premises, comply with specifications approved by the undertaker for the purpose of ensuring that it will be reasonably practicable for such a meter as is mentioned in paragraph (c) above to be installed and connected as so mentioned;
- (e) a requirement that a separate service pipe has been provided—
  - (i) to each house or building on the relevant premises; or
  - (ii) where different parts of a building on the relevant premises are separately occupied, to each of those parts or to any of them;
- (f) a requirement, in relation to the relevant premises—
  - (i) that such a requirement as may be imposed under section 66 below has been complied with; or
  - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that section, that the cistern and its float-operated valve are in good repair;
- (g) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
  - (i) the supply of water to the relevant premises; or
  - (ii) the use of water in those premises,
 of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this paragraph; and
- (h) a requirement that every such step has been taken as has been specified in any notice served on any person under section 75 below in relation to the relevant premises.

<sup>F90</sup>[(2A) No condition shall be imposed by a water undertaker under subsection (2)(e) above unless it is reasonable to do so in order to ensure that the undertaker will be able to perform its functions, in relation to the supply of water to the relevant premises or any part of those premises, efficiently.]

- (3) A condition shall not be imposed by a water undertaker under this section on a person who has served a connection notice except by a counter-notice served on that person before the end of the period of fourteen days beginning with the day after the service of the connection notice.

<sup>F91</sup>[(3A) Any dispute as to whether any requirement of a kind mentioned in subsection (2) (a), (b), (e) or (f) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.

- (3B) Any dispute between a water undertaker and any other person as to whether—
  - (a) any security required by a condition imposed under subsection (2)(a) above was reasonably required,



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- (b) the expenses referred to in subsection (2)(b)(ii) above were incurred reasonably, or
  - (c) in a particular case, subsection (2A) above prevents a water undertaker from imposing a condition under subsection (2)(e) above,
- may be referred to the Director for determination under section 30A above by either party to the dispute.]
- (4) This section shall be without prejudice to the provisions of sections 233 and 372 of the <sup>M6</sup>Insolvency Act 1986 (conditions of supply after insolvency).

#### Textual Amendments

- F88** Word in s. 47(2)(b)(ii) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(2\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II
- F89** S. 47(2)(d)(i) substituted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 92\(3\)\(7\), 105\(3\)](#); S.I. 2004/641, [art. 4\(a\)](#) (with [art. 6, Sch. 3](#))
- F90** S. 47(2A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(3\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II
- F91** S. 47(3A)(3B) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(4\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II

#### Marginal Citations

- M6** 1986 c. 45.

### 48 Interest on sums deposited in pursuance of the deposit condition.

- (1) Where for the purposes of subsection (2)(a) of section 47 above any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—
- (a) by the undertaker with the approval of the Director; or
  - (b) in default of a determination under paragraph (a) above, by the Director,
- on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.
- (2) An approval or determination by the Director for the purposes of this section—
- (a) may be given or made in relation to a particular case or description of cases or generally; and
  - (b) may be revoked at any time.

### 49 Supplemental provisions with respect to the metering conditions.

- (1) The power conferred on a water undertaker to impose conditions under section 47 above for the purposes of metering—
- (a) shall be exercisable in relation to any premises even if the undertaker has no immediate intention, when the power is exercised, of fixing charges in relation to those premises by reference to volume; but
  - (b) shall not be exercisable so as to require the alteration or removal of any pipe laid or plumbing installed before 1st April 1989.

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- (2) Specifications approved by any water undertaker for the purposes of subsection (2)(c) or (d) of section 47 above may be approved—
- (a) in relation to particular premises; or
  - (b) by being published in such manner as the undertaker considers appropriate, in relation to premises generally or to any description of premises.
- <sup>F92</sup>(3) Any dispute between a water undertaker and any other person as to the terms of any condition imposed under section 47 above for the purposes of metering shall be referred—
- (a) to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person; or
  - (b) if no agreement is reached, for determination by the Director under section 30A above.]
- (4) References in this section to the imposition of a condition under section 47 above for the purposes of metering are references to the imposition of conditions by virtue of subsection (2)(c) or (d) of that section.

#### Textual Amendments

- F92** S. 49(3) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(4\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

## 50 Restriction on imposition of condition requiring separate service pipes.

- (1) This section applies where the effect of a connection notice served in respect of any house is to require a service pipe to that house to be connected with a water main with which it has previously been connected.
- (2) Where this section applies, the water undertaker on which the connection notice is served shall not be entitled to make the reconnection subject to any such condition as, apart from this section, may be imposed by virtue of section 47(2)(e) above unless the undertaker would have been entitled under section 64 below to require the provision of a separate service pipe if the reconnection had already been made.

## 51 Time for performance of connection etc. duties.

- (1) A water undertaker shall not be in breach of a duty imposed by virtue of the service of a connection notice unless—
  - (a) in the case of a duty to lay any service pipe or to connect any service pipe to which such a duty relates, it has failed to lay that pipe or to make that connection as soon as reasonably practicable after the relevant day;
  - (b) in the case of a duty to connect a service pipe the whole of which has already been laid when the notice is served on the undertaker, it has failed to make the connection before the end of the period of fourteen days beginning with the relevant day.
- (2) In any case in which a water undertaker is subject to any such duty as is mentioned in subsection (1)(a) above, it shall be presumed, unless the contrary is shown in relation to that case, that the period of twenty-one days beginning with the relevant day is the period within which it is reasonably practicable for a water undertaker—

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- (a) to lay so much of any service pipe; and
- (b) to fit such stopcock,

as it is necessary to lay or fit in that case for connecting a water main in a street with a service pipe at the boundary of any premises which abut on the part of the street where the main is situated.

(3) Where—

- (a) a connection notice is served in respect of any premises; and
- (b) at the time when the notice is served, the customer’s part of the service pipe to those premises has not been laid,

the duties of the undertaker under sections 45 and 46 above shall not arise by virtue of that notice until the person serving the notice, having obtained the necessary consents from the owners and occupiers of any affected land, has, at his own expense, laid so much of the service pipe as it is necessary, for the purpose of making the connection, to lay otherwise than in a street or in land mentioned in subsections (3) to (5) of section 46 above.

(4) In subsection (3) above the reference to the customer’s part of the service pipe to any premises is a reference to so much of the service pipe to those premises as falls to be laid otherwise than by the water undertaker in pursuance of section 46 above.

(5) Where—

- (a) a person who has served a connection notice on a water undertaker has failed to comply with his obligation under section 45(3)(a) above to supplement that notice with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required to comply with the duties imposed by virtue of the notice as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its compliance with those duties until a reasonable time after the required information is provided.

(6) In this section “the relevant day”, in relation to a duty imposed on a water undertaker by virtue of a connection notice, means the day after whichever is the latest of the following days, that is to say—

- (a) the day on which the notice was served on the undertaker;
- (b) in a case where it is necessary for the person serving the notice to lay any service pipe after serving the notice, the day on which a notice stating that the pipe has been laid is served on the undertaker;
- (c) the day on which all such conditions are satisfied as the undertaker has, under sections 47 to 50 above, made conditions of its compliance with that duty.

*F<sup>93</sup> Adoption of water mains and service pipes*

**Textual Amendments**

**F93** Ss. 51A-51E and preceding cross-heading inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 92\(1\), 105\(3\)](#); [S.I. 2004/641](#), [art. 4\(a\)](#) (with [art. 6](#), [Sch. 3](#))

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## **51A Agreements to adopt water main or service pipe at future date**

- (1) Subject to subsections (2) and (10) below, a water undertaker may agree with any person constructing or proposing to construct—
  - (a) any water main; or
  - (b) any service pipe,
 that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay, to be vested in that undertaker.
- (2) Subsection (1) above shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—
  - (a) nothing in this section shall prevent a water undertaker from agreeing apart from this section to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and
  - (b) such a declaration shall take effect as a declaration made under this Chapter.
- (3) A person constructing or proposing to construct a water main or a service pipe to which subsection (1) above applies may make an application in writing to a water undertaker requesting the undertaker to make an agreement under this section.
- (4) An application under subsection (3) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but subject to subsection (5) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.
- (5) Where—
  - (a) a person who has made an application to a water undertaker under subsection (3) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and
  - (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 51B below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,
 the undertaker may delay its response to the application until a reasonable time after the required information is provided.
- (6) In deciding whether or on what terms to grant an application under subsection (3) above, a water undertaker shall have regard in particular to any effect or potential effect on the quality of water supplies and to any increased danger to life or health which it considers may result.
- (7) The terms of an agreement under subsection (1) above relating to a water main may, in particular, include terms—
  - (a) for the provision (at the expense of the person constructing or proposing to construct the water main) by—
    - (i) that person; or

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- (ii) the water undertaker,
    - of such associated infrastructure at or downstream of the point of connection with the undertaker's supply system as it is necessary to provide in consequence of incorporating the new water main into that system;
  - (b) providing that, if the water main and the associated infrastructure are constructed in accordance with the terms of the agreement, the undertaker will, in addition to declaring the water main to be vested in it, declare the associated infrastructure to be so vested;
  - (c) where the undertaker considers that the proposed main is, or is likely to be, needed for the provision of water supply services in addition to those for which the person is proposing to construct the main—
    - (i) requiring that person to construct the main in a manner differing, as regards material or size of pipes, depth or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it; and
    - (ii) providing for the repayment by the undertaker of any extra expense reasonably incurred by that person in complying with that requirement;
  - (d) for the connection of the new water main to the undertaker's existing supply system at the point or points specified in the agreement;
  - (e) for any service pipes which the person constructing or proposing to construct the new water main proposes to connect to that main to be constructed in accordance with the terms of the agreement and, subject to that, to be vested in the undertaker at the same time as the main.
- (8) The terms of an agreement under subsection (1) above relating to a service pipe may, in particular, include terms—
  - (a) for the connection of the new service pipe to the undertaker's existing supply system at the point or points specified in the agreement;
  - (b) for such requirements of the kind referred to in section 47(2) above as may be applicable to be complied with before connection takes place.
- (9) An agreement made under this section by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.
- (10) A water undertaker shall not make an agreement under this section with respect to a water main or a service pipe situated within the area of another water undertaker, until either—
  - (a) that other undertaker has consented in writing to the making of the agreement; or
  - (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

#### **[<sup>F94</sup>51B Adoption at a future date: orders by Authority**

- (1) This section applies where a person constructing or proposing to construct a water main or service pipe makes a request to a water undertaker under section 51A(3).

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- (2) The person or the water undertaker may apply to the Authority for an order under subsection (4) if the person and the water undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the water undertaker, make an order under subsection (4) if the Authority is satisfied that—
  - (a) it is appropriate for work proposed to be done by a person other than the water undertaker to be so done, and
  - (b) the person and the water undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—
  - (a) require the water undertaker to give such undertakings as to the vesting of the water main or service pipe in the undertaker as the Authority may specify, and
  - (b) impose such terms and conditions as regards taking the benefit of the undertakings as the Authority may specify.
- (5) An order under subsection (4) has effect as an agreement under section 51A between the person and the water undertaker.
- (6) The Authority may not, by order under subsection (4), require a water undertaker to vest in itself a water main or service pipe as regards which there is a contravention of any of the requirements of section 74 that are prescribed for the purposes of this subsection.
- (7) The Authority may not make an order under subsection (4) with respect to a water main or service pipe that is situated within the area of another water undertaker, until either—
  - (a) that other undertaker has consented in writing to the making of the order, or
  - (b) the Minister, on an application made to the Minister, has disapplied paragraph (a), either unconditionally or subject to such conditions as the Minister thinks fit.
- (8) “The Minister” means—
  - (a) the Secretary of State, as regards the consent of a water undertaker whose area is wholly or mainly in England;
  - (b) the Welsh Ministers, as regards the consent of a water undertaker whose area is wholly or mainly in Wales.
- (9) Neither the CMA nor the Authority may exercise, in respect of an agreement for the vesting of a water main or service pipe in a water undertaker at a future date, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (10) Subsection (9)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement for the vesting of a water main or service pipe at a future date, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (11) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the water supply industry;
  - (b) the recovery by the water undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the ability of the water undertaker to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the water undertaker to meet its existing obligations, or likely future obligations, to supply water.]

#### Textual Amendments

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by [Water Act 2014 \(c. 21\), ss. 10\(3\), 94\(3\); S.I. 2015/1938, art. 2\(b\)\(ii\)](#)

#### [<sup>F94</sup>51C Variation and termination of section 51A agreements

- (1) On the application of a party to a section 51A agreement to vary (or terminate) the agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient that the section 51A agreement should be varied (or terminated),
  - (b) if the Authority is satisfied, in the case of an application to vary the agreement, that it is appropriate for work proposed to be done by a person other than the water undertaker to be so done, and
  - (c) if the Authority is satisfied that variation (or termination) cannot be achieved by agreement within a reasonable time,
- by order vary (or terminate) the section 51A agreement.
- (2) If an order under subsection (1) is made in relation to a section 51A agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect, as the case may be.
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 51A agreement, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement to vary or terminate a section 51A agreement, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.

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- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the water undertaker in complying with its obligations under the section 51A agreement in question and to the desirability of—
- (a) facilitating effective competition within the water supply industry;
  - (b) the recovery by the water undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the ability of the water undertaker to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the water undertaker to meet its existing obligations, or likely future obligations, to supply water.
- (7) In this section and sections 51CA to 51CG “section 51A agreement” means an agreement with a water undertaker for the vesting of a water main or service pipe in a water undertaker at a future date and includes—
- (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
  - (b) any agreement which has been varied by order under subsection (1).]

#### Textual Amendments

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by [Water Act 2014 \(c. 21\), ss. 10\(3\), 94\(3\); S.I. 2015/1938, art. 2\(b\)\(ii\)](#)

#### Codes in respect of section 51A agreements

**F94** **51CA**

- (1) The Authority must issue a code in respect of section 51A agreements.
- (2) The code may make provision about—
  - (a) procedures in connection with making an agreement under section 51A;
  - (b) procedures in connection with varying or terminating a section 51A agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 51B(4) or 51C(1);
  - (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a water undertaker;
  - (e) the terms and conditions of a section 51A agreement;
  - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 51A agreement;
  - (g) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) Provision under subsection (2)(c) may in particular require the Authority to consult—
  - (a) the Chief Inspector of Drinking Water;
  - (b) the Chief Inspector of Drinking Water for Wales if there is one.
- (4) Provision under subsection (2)(d) may include in particular provision about circumstances relating to—
  - (a) the nature of the work;



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- (b) the kind of premises supplied or to be supplied.
- (5) Provision under subsection (2)(e) may include in particular provision about terms and conditions as regards—
  - (a) constructing associated infrastructure;
  - (b) vesting associated infrastructure in a water undertaker;
  - (c) constructing water mains so as to meet additional supply requirements;
  - (d) connecting new water mains or service pipes to the existing supply system of a water undertaker;
  - (e) complying with requirements of the kind referred to in section 47(2);
  - (f) the duration of a section 51A agreement.
- (6) If the Authority considers that a water undertaker is not acting as required by the code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) The Authority may not give a direction under subsection (6) requiring a person to enter into, vary or terminate an agreement.
- (8) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (9) The code may make different provision for different persons or descriptions of person.
- (10) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (11) A revised code may include provision for applying any of its revisions to section 51A agreements made before the revised code comes into force.

#### Textual Amendments

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by [Water Act 2014 \(c. 21\), ss. 10\(3\), 94\(3\); S.I. 2015/1938, art. 2\(b\)\(ii\)](#)

### 51CB Codes under section 51CA: procedure

- (1) Before issuing a code under section 51CA, the Authority must—
  - (a) prepare a draft of the proposed code under section 51CA, and
  - (b) consult the relevant persons about the proposed code.
- (2) The relevant persons are—
  - (a) the Chief Inspector of Drinking Water;
  - (b) the Chief Inspector of Drinking Water for Wales if there is one;
  - (c) such other persons as the Authority considers appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (4) Before a code under section 51CA prepared by the Authority is issued, the Minister may direct the Authority—
  - (a) not to issue the code, or
  - (b) to issue the code with specified modifications.

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- (5) Subsection (4) is subject to subsections (7) and (8).
- (6) In subsection (4) “the Minister” means—
- (a) the Secretary of State, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) The power under subsection (4) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (8) If the power under subsection (4) is not exercised by the Secretary of State or the Welsh Ministers on the first occasion on which it may be exercised by the Secretary of State or (as the case may be) the Welsh Ministers, it may not be exercised by the Secretary of State or (as the case may be) the Welsh Ministers on a later occasion.
- (9) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (10) This section is subject to section 51CC.

#### Textual Amendments

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by [Water Act 2014 \(c. 21\), ss. 10\(3\), 94\(3\); S.I. 2015/1938, art. 2\(b\)\(ii\)](#)

#### 51CC Codes under section 51CA: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 51CA and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 51CB does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
- (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

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### Textual Amendments

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by Water Act 2014 (c. 21), ss. 10(3), 94(3); S.I. 2015/1938, art. 2(b)(ii)

## 51CD Rules about charges in connection with a section 51A agreement

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a section 51A agreement.
- (2) The rules may in particular make provision about—
  - (a) what types of charge may be imposed;
  - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
  - (c) principles for determining what types of charge may or may not be imposed;
  - (d) principles for determining the amount of any charge that may be imposed;
  - (e) publication of the charges that may be imposed.
- (3) The rules may require a water undertaker, upon declaring a water main or service pipe to be vested in the undertaker in accordance with a section 51A agreement, to pay to the other party to the agreement an amount (which may be nil) determined in accordance with the rules.
- (4) Rules made by virtue of subsection (3) may, in particular, provide for the determination to take into account—
  - (a) revenue that might be derived from the water main or service pipe in question;
  - (b) costs that might have been incurred in providing such a water main or service pipe.
- (5) The rules may also make provision as to—
  - (a) the amount of security that may be required by a water undertaker for the purposes of any charges imposed by the water undertaker under a section 51A agreement;
  - (b) the type of security that may be required;
  - (c) the payment of interest on a sum deposited with a water undertaker by way of security.
- (6) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make different provision for different water undertakers or descriptions of undertaker.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
  - (a) guidance is issued under section 51CG, and

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- (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (11) Revised rules may include provision for applying any of their revisions to section 51A agreements made before the revised rules come into effect.

#### Textual Amendments

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by Water Act 2014 (c. 21), ss. 10(3), 94(3); S.I. 2015/1938, art. 2(b)(ii)

### 51CE Rules under section 51CD: procedure

- (1) Before issuing rules under section 51CD, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any water undertakers or other persons likely to be affected by the rules;
  - (e) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which the relevant persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 51CG in making rules under section 51CD.
- (5) Before rules under section 51CD prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
  - (a) the Secretary of State, so far as the rules relate to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the rules relate to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 51CF.

#### Textual Amendments

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by Water Act 2014 (c. 21), ss. 10(3), 94(3); S.I. 2015/1938, art. 2(b)(ii)

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### **51CF Rules under section 51CD: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 51CD and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 51CE does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
  - (a) that period of 14 days expires, or
  - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised rules, and
  - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 51CE.

#### **Textual Amendments**

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by [Water Act 2014 \(c. 21\), ss. 10\(3\), 94\(3\); S.I. 2015/1938, art. 2\(b\)\(ii\)](#)

### **51CG Rules under section 51CD: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 51CD.
- (2) Before issuing the guidance, the Minister must—
  - (a) prepare a draft of the proposed guidance;
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—

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- (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
- (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the guidance is as to the content of rules relating to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.]

#### Textual Amendments

**F94** Ss. 51B-51CG substituted for ss. 51B, 51C (18.12.2015 for the substitution of ss. 51CD-51CG) by [Water Act 2014 \(c. 21\)](#), **ss. 10(3)**, 94(3); [S.I. 2015/1938](#), art. 2(b)(ii)

#### 51D Prohibition on connection without adoption

- (1) Where a person (other than a water undertaker) constructs a water main or service pipe which is to be used, in whole or in part, for supplying water for domestic or food production purposes, no water undertaker may permit that water main or service pipe to become connected with its supply system unless it vests (to the relevant extent) in a water undertaker.
- (2) In subsection (1) above, “the relevant extent” means the extent specified in the agreement for the vesting in the undertaker of the water main or service pipe in question.
- (3) The prohibition imposed on a water undertaker by subsection (1) above shall be enforceable under section 18 above by the Authority.

#### 51E Sections 51A to 51D: supplementary

- (1) For the purposes of sections 51A to 51D above, the definition of “water main” in section 219(1) below shall be treated as if the words “not being a pipe for the time being vested in a person other than the undertaker” were omitted.
- (2) In sections 51A to 51C above, references to so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay shall be construed disregarding section 46(8) above.
- (3) In this Act, references to vesting or the making of a declaration of vesting with respect to a service pipe refer to so much of the service pipe as is specified for those purposes in the relevant vesting agreement.]

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### *Domestic supplies*

## **52 The domestic supply duty.**

- (1) The domestic supply duty of a water undertaker in relation to any premises is a duty, until there is an interruption of that duty—
  - (a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and
  - (b) to maintain the connection between the undertaker’s water main and the service pipe by which that supply is provided to those premises.
- (2) Subject to the following provisions of this section and to section 53 below, a water undertaker shall owe a domestic supply duty in relation to any premises to which this section applies<sup>F95</sup> . . . if—
  - (a) a demand for a supply of water for domestic purposes has been made, in accordance with subsection (5) below, to the undertaker in respect of those premises; or
  - (b) those premises are premises to which this section applies by reason of a supply of water provided before 1st September 1989,and there has been no interruption of the domestic supply duty in relation to those premises since that demand was made or, as the case may be, since the beginning of 1st September 1989.
- (3) [<sup>F96</sup>Subject to subsection (4A) below,]this section applies to any premises if—
  - (a) they consist in the whole or any part of a building and are connected by means of a service pipe to [<sup>F97</sup>one of the water undertaker’s water mains]; and
  - (b) the requirements of subsection (4) below are satisfied in relation to those premises.
- (4) The requirements of this subsection are satisfied in relation to any premises if—
  - (a) the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of a connection notice served in respect of those premises;
  - (b) that pipe was the means by which a supply of water from that main was being supplied to those premises for domestic purposes immediately before 1st September 1989;
  - (c) the condition specified in paragraph (b) above would be satisfied in relation to the premises if any service pipe to those premises had not been temporarily disconnected for the purposes of any necessary works which were being carried out immediately before 1st September 1989; or
  - (d) the condition specified in any of the preceding paragraphs—
    - (i) has been satisfied in relation to the premises at any time on or after 1st September 1989; and
    - (ii) would continue to be satisfied in relation to the premises had not the whole or any part of a service pipe to those premises, or the main with which such a pipe had been connected, been renewed (on one or more previous occasions).

[<sup>F98</sup>(4A) This section does not apply to any premises if—

- (a) they are not in the area of the water undertaker;
- (b) they are not household premises (as defined in section 17C above); and

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- (c) the total quantity of water estimated to be supplied to them annually for the purposes of subsection (2) of section 17D above is not less than the quantity specified in that subsection.]
- (5) For the purposes of this section a demand in respect of any premises is made in accordance with this subsection if it is made—
- (a) by the person who is the occupier of the premises at the time when the demand is made; or
  - (b) by a person who is the owner of the premises at that time and agrees with the undertaker to pay all the undertaker’s charges in respect of the supply demanded.
- (6) For the purposes of this section—
- (a) there is an interruption of the domestic supply duty owed by a water undertaker in relation to any premises if that supply is cut off by anything done by the undertaker in exercise of any of its disconnection powers, other than a disconnection or cutting off for the purposes of the carrying out of any necessary works; and
  - (b) a domestic supply duty owed in relation to any premises shall not be treated as interrupted by reason only of a change of the occupier or owner of the premises.
- [<sup>F99</sup>(6A) For the purposes of this section, there is also an interruption of the domestic supply duty owed by a water undertaker in relation to any premises where—
- (a) a notice is served in respect of those premises under section 63AA below; and
  - (b) the time specified in that notice has passed.]
- (7) Nothing in this section shall impose any duty on a water undertaker—
- (a) to provide a supply of water directly from, or maintain any connection with, a water main which is a trunk main or is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; or
  - (b) to provide a supply of water to any premises, or maintain the connection between a water main and a service pipe to any premises, during any period during which it is reasonable—
    - (i) for the supply of water to those premises to be cut off or reduced; or
    - (ii) for the pipe to be disconnected,
 for the purposes of the carrying out of any necessary works.
- (8) In this section references to the disconnection powers of a water undertaker are references to the powers conferred on the undertaker by any of sections 60 to 62 and 75 below.

#### Textual Amendments

- F95** Words in s. 52(2) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), ss. 41, 56\(7\), Sch. 2](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F96** Words in s. 52(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 15\(2\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F97** Words in s. 52(3)(a) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para. 20](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I



*Status: Point in time view as at 01/04/2016.*

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- F98** S. 52(4A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 15(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F99** S. 52(6A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 15(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

### 53 Conditions of compliance with domestic supply duty.

- (1) Where a demand for the purposes of section 52(2) above has been made to a water undertaker in respect of any premises (“the relevant premises”), the undertaker may make compliance with one or more of the requirements specified in subsection (2) below a condition of providing his first supply of water in compliance with that demand.
- (2) The requirements mentioned in subsection (1) above are—
- (a) a requirement, in a case where the demand is made as a consequence of a supply having been cut off by reason of any person’s failure to pay any charges, that the person making the demand has paid any amount owed by him to the undertaker—
    - (i) in respect of a supply of water to the relevant premises; or
    - (ii) in respect of expenses [<sup>F100</sup>reasonably] incurred in cutting off any such supply;
  - (b) a requirement, in relation to the relevant premises
    - (i) that such a requirement as may be imposed under section 66 below has been complied with; or
    - (ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that section, that the cistern and its float-operated valve are in good repair;
  - (c) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—
    - (i) the supply of water to the relevant premises; or
    - (ii) the use of water in those premises,of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection; and
  - (d) a requirement that every such step has been taken as has been specified in any notice served on any person under section 75 below in relation to the relevant premises.

<sup>F101</sup>[(2A) Any dispute between a water undertaker and any other person as to whether the expenses referred to in subsection (2)(a)(ii) above were incurred reasonably may be referred to the Director for determination under section 30A above by either party to the dispute.]

<sup>F102</sup>[(2A) Any dispute between a water undertaker and any other person as to whether any requirement of a kind mentioned in subsection (2)(a) or (b) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.]

- (3) This section shall be without prejudice to the provisions of sections 233 and 372 of the <sup>M7</sup>Insolvency Act 1986 (conditions of supply after insolvency).

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#### Textual Amendments

**F100** Word in s. 53(2)(a)(ii) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(5\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

**F101** S. 53(2A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 51\(5\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

**F102** S. 53(2A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(5\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

#### Marginal Citations

**M7** 1986 c. 45.

### 54 Enforcement of domestic supply duty.

- (1) A duty imposed on a water undertaker under section 52 above—
  - (a) to provide a supply of water to any premises; or
  - (b) to maintain a connection between a water main and a service pipe by which such a supply is provided,
 shall be owed to the consumer.
- (2) Where a duty is owed by virtue of this section to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

#### *Other supplies*

### 55 Supplies for non-domestic purposes.

- (1) This section applies where the owner or occupier of any premises in the area of a water undertaker requests the undertaker to provide a supply of water to those premises and—
  - (a) the premises are premises which do not consist in the whole or any part of a building; or
  - (b) the requested supply is for purposes other than domestic purposes.
- [<sup>F103</sup>(1A) This section also applies where—
  - (a) a water undertaker is requested to provide a supply of water to premises which are not in the undertaker’s area by the owner or occupier of the premises;
  - (b) the premises are household premises (as defined in section 17C above) or the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection; and
  - (c) paragraph (a) or (b) of subsection (1) above applies.]
- (2) Where this section applies, it shall be the duty of the water undertaker, in accordance with such terms and conditions as may be determined under section 56 below—

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- (a) to take any such steps as may be so determined in order to enable the undertaker to provide the requested supply; and
  - (b) having taken any such steps, to provide that supply.
- (3) A water undertaker shall not be required by virtue of this section to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if the provision of that supply or the taking of those steps would—
  - (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (4) A water undertaker shall not be required by virtue of this section to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if there is a contravention in relation to the water fittings used or to be used in connection with—
  - (a) the supply of water to those premises; or
  - (b) the use of water in those premises,of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.
- (5) Where—
  - (a) a request has been made by any person to a water undertaker for the purposes of subsection (2) above; and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by the undertaker of any of its powers or the carrying out by the undertaker of any works,the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of that person, under any term or condition in accordance with which those steps are taken, to re-imburse the undertaker in respect of some or all of the expenses incurred by the undertaker in taking those steps.
- (6) Nothing in this section shall impose any duty on a water undertaker to provide a supply of water to any premises during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced for the purposes of the carrying out of any necessary works.
- (7) The duty of a water undertaker to supply water under this section at the request of any person, and any terms and conditions determined under section 56 below in default of agreement between the undertaker and that person, shall have effect as if contained in such an agreement.
- (8) Except so far as otherwise provided by the terms and conditions determined under section 56 below in relation to any supply, the duties of a water undertaker under this section shall have effect subject to the provisions of sections 60 to 63 <sup>F104</sup>and 63AB] and 75 below.

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#### Textual Amendments

- F103** S. 55(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 16\(2\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F104** Words in s. 55(8) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 16\(3\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))

#### Modifications etc. (not altering text)

- C13** S. 55 extended (01.12.1991) By [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(2), 4(2), [Sch. 2 Pt. I para.8](#).

## 56 Determinations on requests for non-domestic supplies.

- (1) Subject to subsection (3) below, any terms or conditions or other matter which falls to be determined for the purposes of a request made by any person to a water undertaker for the purposes of section 55 above shall be determined—
  - (a) by agreement between that person and the water undertaker; or
  - (b) in default of agreement, by the Director according to what appears to him to be reasonable.
- (2) Subject to subsection (3) below, the Director shall also determine any dispute arising between any person and a water undertaker by virtue of subsection (3) or (4) of section 55 above.
- (3) The Director may, instead of himself making a determination under subsection (1) or (2) above, refer any matter submitted to him for determination under that subsection to the arbitration of such person as he may appoint.
- (4) For the purposes of any determination under this section by the Director or any person appointed by him it shall be for a water undertaker to show that it should not be required to comply with a request made for the purposes of section 55 above.
- (5) The charges in respect of a supply provided in compliance with any request made for the purposes of section 55 above—
  - (a) shall not be determined by the Director or a person appointed by him, except in so far as, at the time of the request, no provision is in force by virtue of a charges scheme under section 143 below in respect of supplies of the applicable description; and
  - (b) in so far as they do fall to be determined, shall be so determined having regard to the desirability of the undertaker's—
    - (i) recovering the expenses of complying with its obligations under section 55 above; and
    - (ii) securing a reasonable return on its capital.
- (6) To the extent that subsection (5)(a) above excludes any charges from a determination under this section, those charges shall be fixed from time to time by a charges scheme under section 143 below, but not otherwise.
- (7) The determination of any matter under this section shall be without prejudice to the provisions of sections 233 and 372 of the <sup>M8</sup>Insolvency Act 1986 (conditions of supply after insolvency).

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**Marginal Citations**

M8 1986 c. 45.

**57 Duty to provide a supply of water etc. for fire-fighting.**

- (1) It shall be the duty of a water undertaker to allow any person to take water for extinguishing fires from any of its water mains or other pipes on which a fire-hydrant is fixed.
- (2) Every water undertaker shall, at the request of the [<sup>F105</sup>fire and rescue authority] concerned, fix fire-hydrants on its water mains (other than its trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker.
- (3) It shall be the duty of every water undertaker to keep every fire-hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose, to replace any such hydrant when necessary.
- (4) It shall be the duty of a water undertaker to ensure that a [<sup>F105</sup>fire and rescue authority] has been supplied by the undertaker with all such keys as the authority may require for the fire-hydrants fixed on the water mains or other pipes of the undertaker.
- [<sup>F106</sup>(4A) Where a fire-hydrant is removed (other than at the request of the fire authority concerned) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.]
- (5) Subject to [<sup>F107</sup>subsection (5A) and] section 58(3) below, the expenses incurred by a water undertaker in complying with its obligations under subsections (2) to (4) above shall be borne by the [<sup>F108</sup>fire and rescue authority] concerned.
- [<sup>F109</sup>(5A) Where a fire-hydrant is damaged as the result of any use made of it with the authority of a water undertaker, other than use for the purposes of fire-fighting or for any other purposes of a fire and rescue authority, the fire and rescue authority is not liable for the cost of repairing or replacing the hydrant.]
- (6) Nothing in this section shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.
- (7) The obligations of a water undertaker under this section shall be enforceable under section 18 above by the Secretary of State.
- (8) In addition, where a water undertaker is in breach of its obligations under this section, the undertaker shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (9) In any proceedings against any water undertaker for an offence under subsection (8) above it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
- (10) [<sup>F110</sup>.....]

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### Textual Amendments

- F105** Words in s. 57(2)(4) substituted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), ss. 53, 61, {Sch. 1 para. 76(2)}; S.I. 2004/2304, [art. 2\(2\)](#) (subject to savings in [art. 3](#)); S.I. 2004/2917, [art. 2](#)
- F106** S. 57(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 84(1), 105(3); S.I. 2004/641, [art. 3\(v\)](#) (with [art. 6](#), [Sch. 3](#))
- F107** Words in s. 57(5) inserted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), ss. 53, 61, {Sch. 1 para. 76(3)(a)}; S.I. 2004/2304, [art. 2\(2\)](#) (subject to savings in [art. 3](#)); S.I. 2004/2917, [art. 2](#)
- F108** Words in s. 57(5) substituted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), ss. 53, 61, {Sch. 1 para. 76(3)(b)}; S.I. 2004/2304, [art. 2\(2\)](#) (subject to [art. 2](#)); S.I. 2004/2917, [art. 2](#)
- F109** S. 57(5A) inserted (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), ss. 53, 61, {Sch. 1 para. 76(4)}; S.I. 2004/2304, [art. 2\(2\)](#) (subject to savings in [art. 3](#)); S.I. 2004/2917, [art. 2](#)
- F110** S. 57(10) repealed (1.10.2004 for E. and 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), ss. 54, 61, {Sch. 2}; S.I. 2004/2304, [art. 2\(2\)](#) (subject to savings in [art. 3](#)); S.I. 2004/2917, [art. 2](#)

## 58 Specially requested fire-hydrants.

- (1) A water undertaker shall, at the request of the owner or occupier of any factory or place of business, fix a fire-hydrant, to be used for extinguishing fires and not other purposes, at such place on any suitable water main or other pipe of the undertaker as is as near as conveniently possible to that factory or place of business.
  - (2) For the purposes of subsection (1) above a water main or other pipe is suitable, in relation to a factory or place of business, if—
    - (a) it is situated in a street which is in or near to that factory or place of business; and
    - (b) it is of sufficient dimensions to carry a hydrant and is not a trunk main.
  - (3) Subsection (5) of section 57 above shall not apply in relation to expenses incurred in compliance, in relation to a specially requested fire-hydrant, with the obligations under subsections (3) and (4) of that section.
  - (4) Any expenses incurred by a water undertaker—
    - (a) in complying with its obligations under subsection (1) above; or
    - (b) in complying, in relation to a specially requested fire-hydrant, with its obligations under section 57(3) or (4) above,
 shall be borne by the owner or occupier of the factory or place of business in question, according to whether the person who made the original request for the hydrant did so in his capacity as owner or occupier.
- [<sup>F111</sup>(4A) Where a specially requested fire-hydrant is removed (other than at the request of the owner or occupier of the factory or place of business in question) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.]

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- (5) Subsections (6) to (9) of section 57 above shall apply in relation to the obligations of a water undertaker under this section as they apply to the obligations of a water undertaker under that section.
- (6) In this section—
- “factory” has the same meaning as in the <sup>M9</sup>Factories Act 1961; and
  - “specially requested fire-hydrant” means a fire-hydrant which—
    - (a) is fixed on a water main or other pipe of a water undertaker; and
    - (b) was fixed on that main or pipe (whether before or after it became such a main or pipe under the <sup>M10</sup>Water Act 1989) in pursuance of a request made by the owner or occupier of a factory or place of business.

#### Textual Amendments

**F111** S. 58(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 84(2), 105(3)**; [S.I. 2004/641](#), **art. 3(v)** (art. 6, Sch. 3)

#### Marginal Citations

**M9** 1961 c. 34.

**M10** 1989 c. 15.

## 59 Supplies for other public purposes.

- (1) A water undertaker shall, at the request of a sewerage undertaker, highway authority or local authority, provide, from such of its pipes as are of an appropriate capacity, a supply of water for cleansing sewers and drains, for cleansing and watering highways or, as the case may be, for supplying any public pumps, baths or wash-houses.
- (2) A supply of water provided by a water undertaker under this section shall be provided upon such terms and conditions as may be reasonable.
- (3) A water main or other pipe of a water undertaker shall be treated as of an appropriate capacity for the purposes of this section if and only if it has a fire-hydrant fixed on it.
- (4) Nothing in this section shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.
- (5) The obligations of a water undertaker under this section shall be enforceable under section 18 above by the Director.

### *Disconnections*

## 60 Disconnections for the carrying out of necessary works.

- (1) Subject to the following provisions of this section, a water undertaker may—
  - (a) disconnect a service pipe which, for the purposes of providing a supply of water to any premises, is connected with any water main of that undertaker; or
  - (b) otherwise cut off a supply of water to any premises,if it is reasonable for the disconnection to be made, or the supply to be cut off, for the purposes of the carrying out of any necessary works.

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- (2) The power of a water undertaker under this section to cut off a supply of water shall include power to reduce a supply of water.
- (3) Except in an emergency or in the case of a reduction which is immaterial, the power of a water undertaker under this section to cut off or reduce a supply shall be exercisable in relation to any premises only after the undertaker has served reasonable notice on the consumer of the proposal for the carrying out of the necessary works.
- (4) Where a water undertaker exercises its power under this section to make any disconnection or to cut off or reduce a supply of water to any premises for the purposes of the carrying out of any necessary works, it shall owe a duty to the consumer to secure—
  - (a) that those works are carried out with reasonable dispatch; and
  - (b) that any supply of water to those premises for domestic purposes is interrupted for more than twenty-four hours for the purposes of the carrying out of those works only if an emergency supply has been made available (whether or not in pipes) within a reasonable distance of the premises.
- (5) Any breach by a water undertaker of the duty owed by virtue of subsection (4) above which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

## 61 Disconnections for non-payment of charges.

- (1) Subject to the following provisions of this section, a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises, if the occupier of the premises—
    - (a) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and
    - (b) has failed to do so before the end of the period of seven days beginning with the day after he is served with notice requiring him to do so.
- [<sup>F112</sup>(1A) The power conferred by subsection (1) above is not exercisable in relation to any premises specified in Schedule 4A to this Act.]
- (2) Where—
    - (a) a water undertaker has served a notice for the purposes of paragraph (b) of subsection (1) above on a person; and
    - (b) within the period of seven days mentioned in that paragraph, that person serves a counter-notice on the undertaker stating that he disputes his liability to pay the charges in question,
 the undertaker shall not in respect of that notice exercise his power by virtue of that subsection in relation to any premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in subsection (3) below.
  - (3) For the purposes of subsection (2) above charges are enforceable in a manner specified in this subsection against a person if-
    - (a) the undertaker is able to enforce a judgment against that person for the payment of the charges; or



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- (b) that person is in breach of an agreement entered into, since the service of his counter-notice, for the purpose of avoiding or settling proceedings by the undertaker for the recovery of the charges.
- (4) A water undertaker which exercises its power under this section to disconnect any pipe or otherwise to cut off any supply of water may recover, from the person in respect of whose liability the power is exercised, any expenses reasonably incurred by the undertaker in making the disconnection or in otherwise cutting off the supply.
- (5) Where—
  - (a) a water undertaker has power under this section to disconnect any pipe to any premises, or otherwise to cut off any supply to any premises; and
  - (b) a supply of water is provided to those premises and to other premises wholly or partly by the same service pipe,the undertaker may exercise that power so as to cut off the supply to those other premises if and only if the same person is the occupier of the premises in relation to which the charges are due and of the other premises.

#### Textual Amendments

**F112** S. 61(1A) inserted (30.6.1999) by 1999 c. 9, ss. 1(1), 17(2)

## 62 Disconnections at request of customer.

- (1) Subject to the following provisions of this section, a water undertaker may—
  - (a) disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker; or
  - (b) otherwise cut off a supply of water to any premises,if notice specifying the time after which a supply of water to those premises will no longer be required has been served on the undertaker by a consumer and that time has passed.
- (2) No person shall be liable to a water undertaker for any expenses incurred by the undertaker in exercising the power conferred on the undertaker by this section.

## 63 General duties of undertakers with respect to disconnections.

- (1) Where a water undertaker—
  - (a) disconnects a service pipe to any inhabited house, or otherwise cuts off a supply of water to such a house; and
  - (b) does so without restoring the supply to that house before the end of the period of twenty-four hours beginning with the time when it is cut off,the undertaker shall, no later than forty-eight hours after that time, serve notice that it has cut off that supply on the local authority in whose area the house is situated.
- (2) A water undertaker which fails, without reasonable excuse, to serve a notice on a local authority as required by subsection (1) above shall be guilty of an offence under this section.
- (3) A water undertaker shall be guilty of an offence under this section if—

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- (a) it disconnects a service pipe to any premises, or otherwise cuts off a supply of water to any premises, in a case in which it has no power to do so under sections 60 to 62 above, section 75 below or any other enactment; or
  - (b) in disconnecting any such pipe or cutting off any such supply it fails, without reasonable excuse, to comply with any requirement of the provisions in pursuance of which it disconnects the pipe or cuts off the supply.
- (4) A water undertaker which is guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

*[<sup>F113</sup>Supply by [<sup>F114</sup>water supply licensee]etc*

#### Textual Amendments

- F113** Ss. 63AA-63AC and preceding cross-heading inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 17](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F114** Words in s. 63AA cross-heading substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 62](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(l\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

#### 63AA Supply by [<sup>F115</sup>water supply licensee]: domestic supply

- (1) The owner or occupier of any premises may serve a notice on a water undertaker—
- (a) informing the undertaker that the premises are to be supplied by a [<sup>F116</sup>water supply licensee]; and
  - (b) specifying the time after which a supply of water to the premises by the undertaker will no longer be required.
- (2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.
- (3) In this section and section 63AB below, any reference to two working days is a reference to a period of forty-eight hours calculated after disregarding any time falling on—
- (a) a Saturday or Sunday; or
  - (b) Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

#### Textual Amendments

- F115** Words in s. 63AA title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 63\(2\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(l\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F116** Words in s. 63AA(1)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 63\(3\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(l\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

*Status: Point in time view as at 01/04/2016.*

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### **63AB Supply by licensed water supplier: non-domestic supply**

- (1) The duty of a water undertaker under section 55 above to provide a supply of water to any premises shall cease to apply if—
  - (a) a notice specifying the time after which a supply of water to the premises by the undertaker will no longer be required in consequence of the premises being supplied by a licensed water supplier has been served on the undertaker by the owner or occupier of the premises; and
  - (b) that time has passed.
- (2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.

### **63AC Interim duty of water undertaker: domestic and non-domestic supply**

- (1) This section applies where—
  - (a) a [<sup>F117</sup>water supply licensee] ceases to supply any premises with water; and
  - (b) the owner or occupier of the premises has not notified the water undertaker in whose area the premises are that—
    - (i) he has made arrangements for the continuation of the supply of water to the premises; or
    - (ii) he intends any supply of water to the premises to cease.
- (2) Where this section applies, it shall be the duty of the water undertaker to continue the supply of water to the premises which was made by the [<sup>F118</sup>water supply licensee].
- (3) Where a supply is made under subsection (2)—
  - (a) the charges payable in respect of the supply shall be fixed from time to time by a charges scheme under section 143 below; and
  - (b) subject to subsection (8) below, the supply shall be made until—
    - (i) a supply is made under section 52 or 55 above; or
    - (ii) a notice is served by the undertaker on the owner or occupier of the premises stating that the supply is to be discontinued (subject to subsection (4) below),whichever is earlier.
- (4) A notice under subsection (3)(b)(ii) above may not be served before the end of the period of three months beginning with the day on which the supply by the supplier ceased.
- (5) A water undertaker shall not be required by virtue of this section to provide a supply of water to any premises if the provision of the supply would—
  - (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The supply of water to any premises by a water undertaker under this section shall not prevent a proposed supply to those premises by that undertaker under section 55 above from being regarded as a new supply for the purposes of that section.

*Status: Point in time view as at 01/04/2016.*

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- (7) Where a duty is imposed by this section in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage shall be actionable at the suit of that owner or occupier; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (8) Sections 60 to 63 above apply as they apply where a supply of water is made under section 52 or 55 above.]

**Textual Amendments**

- F117** Words in s. 63AC(1)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 65\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F118** Words in s. 63AC(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 65\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

*[ Use of limiting devices*

**<sup>F119</sup>63A Prohibition of use of limiting devices.**

- (1) A water undertaker shall be guilty of an offence under this section if it uses a limiting device in relation to any premises specified in Schedule 4A to this Act, with the intention of enforcing payment of charges which are or may become due to the undertaker in respect of the supply of water to the premises.
- (2) For the purposes of this section “a limiting device”, in relation to any premises, means any device or apparatus which—
- (a) is fitted to any pipe by which water is supplied to the premises or a part of the premises, whether that pipe belongs to the undertaker or to any other person, and
  - (b) is designed to restrict the use which may be made of water supplied to the premises by the undertaker.
- (3) An undertaker does not commit an offence under this section by disconnecting a service pipe to any premises or otherwise cutting off a supply of water to the premises.
- (4) An undertaker guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

**Textual Amendments**

- F119** S. 63A inserted (30.6.1999) by [1999 c. 9](#), [ss. 2](#), 17(2)

*Status: Point in time view as at 01/04/2016.*

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### *Means of supply*

#### **64 Supply by means of separate service pipes.**

- (1) Subject to the following provisions of this section, a water undertaker may require the provision of a separate service pipe to any premises<sup>F120</sup> . . . which—
  - (a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and
  - (b) are already supplied with water by the undertaker but do not have a separate service pipe.
- (2) Where the supply of water to two or more houses [F121] is provided wholly or partly by the same service pipe], the water undertaker shall not require the provision of separate service pipes to those houses until—
  - (a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;
  - (b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;
  - (c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;
  - (d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or
  - (e) the undertaker has reasonable grounds for believing that such interference as is mentioned in paragraph (d) above is likely to take place.

<sup>F122</sup>[(2A) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in subsection (2) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.]

- (3) If, in the case of any such premises as are described in subsection (1) above, the water undertaker which provides a supply of water to those premises serves notice on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under subsection (4) below—
  - (a) that consumer shall, within three months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of paragraph (b) below;
  - (b) sections 45 to 51 above shall apply as if that consumer had by a connection notice required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;
  - (c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—
    - (i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made a demand for the purposes of section 52 above that such a supply is provided by means of the separate service pipe; and
    - (ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice;

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- and
- (d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.
- (4) If a person upon whom a notice has been served for the purposes of subsection (3) above fails to comply with the notice, the water undertaker may—
- (a) itself carry out the works which that person was required to carry out; and
- (b) recover the expenses reasonably incurred by the undertaker in doing so from that person.
- (5) Without prejudice—
- (a) to the power of a water undertaker by virtue of paragraph (b) of subsection (3) above to impose conditions under section 47 above; or
- (b) to the power conferred by virtue of paragraph (d) of that subsection, any works carried out by a water undertaker by virtue of the provisions of the said paragraph (b) or of subsection (4) above shall be necessary works for the purposes of this Chapter.

#### Textual Amendments

- F120** Words in s. 64(1) repealed (1.7.1992 ) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1, para. 21\(a\), Sch. 2](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F121** Words in s. 64(2) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para. 21\(b\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F122** S. 64(2A) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(6\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

## 65 Duties of undertakers as respects constancy and pressure.

- (1) Subject to the following provisions of this section, it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes as—
- (a) are used for providing supplies of water for domestic purposes; or
- (b) have fire-hydrants fixed on them,
- to be laid on constantly and at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the undertaker's area.
- (2) Nothing in subsection (1) above shall require a water undertaker to provide a supply of water at a height greater than that to which it will flow by gravitation through its water mains from the service reservoir or tank from which that supply is taken.
- (3) For the purposes of this section a water undertaker shall be entitled to choose the service reservoir or tank from which any supply is to be taken.
- (4) Nothing in subsection (1) above shall impose any duty on a water undertaker to maintain the constancy or pressure of any supply of water during any period during which it is reasonable for that supply to be cut off or reduced for the purposes of the carrying out of any necessary works.

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- (5) The Secretary of State may by order modify the application of the preceding provisions of this section in relation to any water undertaker.
- (6) The Secretary of State shall not make an order under subsection (5) above except—
  - (a) in accordance with Schedule 5 to this Act; and
  - (b) on an application made in accordance with that Schedule by the Director or by the water undertaker in relation to which the order is made.
- (7) Subject to subsection (6) above, the power of the Secretary of State to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament
- (8) An order under subsection (5) above may—
  - (a) require the payment of compensation by a water undertaker to persons affected by the order;
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (c) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (9) The obligations of a water undertaker under this section shall be enforceable under section 18 above by the [<sup>F123</sup>Director].
- (10) In addition, where a water undertaker is in breach of a duty under this section, the undertaker shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (11) In any proceedings against any water undertaker for an offence under subsection (10) above it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

#### Textual Amendments

**F123** Word in s. 65(9) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para.22](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I

## 66 Requirements by undertaker for maintaining pressure.

- (1) A water undertaker may require that any premises consisting in—
  - (a) any building or part of a building the supply of water to which need not, in accordance with provision contained in or made under this Act, be constantly laid on under pressure; or
  - (b) any relevant house to which water is required to be delivered at a height greater than a point 10.5 metres below the draw-off level of the service reservoir or tank from which a supply of water is being provided by the undertaker to those premises,shall be provided with a cistern which has a float-operated valve and is fitted on the pipe by means of which water is supplied to those premises.

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- (2) A water undertaker may, in the case of such a house as is mentioned in paragraph (b) of subsection (1) above, require that a cistern the provision of which is required under that subsection shall be capable of holding sufficient water to provide an adequate supply to the house for a period of twenty-four hours.
- (3) If, where a water undertaker provides a supply of water to any premises, the consumer, after having been required to do so by notice served on him by the undertaker, fails before the end of the period specified in the notice—
- (a) to provide a cistern in accordance with a requirement under this section; or
  - (b) to put any such cistern and its float-operated valve into good repair,
- the water undertaker may itself provide a cistern, or carry out any repairs necessary to prevent waste of water.
- (4) The period specified for the purposes of subsection (3) above in a notice under this section shall be a period of not less than twenty-eight days beginning with the day after the service of the notice.
- (5) Where a water undertaker provides a cistern or carries out any repairs under subsection (3) above, it may recover the expenses reasonably incurred by it in doing so from the owner of the premises in question.
- (6) In this section—
- “pre-transfer supplier”, in relation to a house, means the person who was supplying water to that house immediately before 1st September 1989; and
- “relevant house” means any house other than a house in relation to which the following two conditions are satisfied, that is to say—
- (i) the erection of the house was commenced before 1st September 1989; and
  - (ii) no such requirement as is mentioned in subsection (1) or (2) above could have been imposed in relation to the house under any enactment having effect immediately before that date in relation to the pre-transfer supplier.

## [<sup>F124</sup>CHAPTER 2A

### SUPPLY DUTIES ETC: LICENSED WATER SUPPLIERS

#### Textual Amendments

**F124** Pt. 3 Ch. 2A inserted (1.4.2004 for specified provisions and purposes and 1.12.2005 otherwise) by [Water Act 2003 \(c. 37\)](#), ss. 56, 105(3), [Sch. 4 para. 3](#); S.I. 2004/641, [art. 3\(I\)](#), Sch. 1 (with art. 6, Sch. 3); S.I. 2005/2714, [art. 3\(a\)](#) (with Sch. 2 para. 8)

*Duty of undertaker to supply licensed water supplier etc*

#### **66A Wholesale water supply by primary water undertaker**

- (1) This section applies where—



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- (a) a licensed water supplier requests its primary water undertaker to provide it with a supply of water for the purpose of supplying water to the premises of its customers in accordance with the retail authorisation; and
  - (b) the premises are in the area of the undertaker.
- (2) Where this section applies, it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
- (a) to take any such steps—
    - (i) for the purpose of connecting the premises in question with the undertaker’s supply system; or
    - (ii) in respect of that system,
 as may be so provided for in order to enable the undertaker to provide the requested supply; and
  - (b) having taken any such steps, to provide that supply.
- (3) A primary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier, or to take any steps to enable it to provide such a supply, if—
- (a) both of the first and second conditions are satisfied; or
  - (b) the third condition is satisfied.
- (4) The first condition is that—
- (a) the premises to be supplied by the supplier do not consist in the whole or any part of a building; or
  - (b) the supply to be made by it to those premises is for purposes other than domestic purposes.
- (5) The second condition is that the provision of the supply by the undertaker would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The third condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
  - (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.
- (7) Where—
- (a) a request has been made by a licensed water supplier to its primary water undertaker for the purposes of subsection (1) above; and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

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the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

- (8) A water undertaker is the primary water undertaker of a licensed water supplier for the purposes of this section and section 66C below if the undertaker's supply system is to be used for the purpose of making the supply to premises mentioned in those sections.
- (9) In this section and sections 66B and 66C below—
- (a) any reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above; and
  - (b) any reference to the retail authorisation shall be construed in accordance with section 17A(2) above.

## **66B Introduction of water into water undertaker's supply system**

- (1) This section applies where—
- (a) a qualifying licensed water supplier requests a water undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and
  - (b) the premises are in the area of the undertaker.
- (2) This section also applies where—
- (a) a water undertaker agrees to permit a qualifying licensed water supplier to introduce water into the undertaker's treatment works;
  - (b) in connection with that introduction, the supplier requests the undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and
  - (c) the premises are in the area of the undertaker.
- (3) Where this section applies, it shall be the duty of the water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
- (a) to take any such steps—
    - (i) for the purpose of connecting the premises in question with the undertaker's supply system;
    - (ii) for the purpose of connecting the treatment works of the qualifying licensed water supplier with that system (in a case falling within subsection (1) above);
    - (iii) for the purpose of connecting with that system any source used by the qualifying licensed water supplier for the purpose of supplying water other than for domestic or food production purposes (in a case falling within subsection (1) above); or
    - (iv) in respect of that system,  
 as may be so provided for in order to enable the supplier to make the requested introduction of the water into that system; and
  - (b) having taken any such steps, to permit the requested introduction of the water into that system.

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- (4) A water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable a qualifying water supplier to make such an introduction, if the first or second condition is satisfied.
- (5) The first condition is that permitting the introduction of the water into the water undertaker's supply system would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
  - (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.
- (7) Where—
- (a) a request has been made by a qualifying licensed water supplier to a water undertaker for the purposes of subsection (1) or (2) above; and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.
- (8) In this section “treatment works”—
- (a) in relation to a water undertaker, means the works designated as treatment works by the Secretary of State for the purposes of section 17B(6) above;
  - (b) in relation to a qualifying licensed water supplier, means the works designated from time to time by the Secretary of State as treatment works for the purposes of this paragraph.
- (9) Before designating any works for the purposes of subsection (8)(b) above, the Secretary of State shall consult the Assembly.
- (10) A list of any works designated for the purposes of subsection (8)(b) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.
- (11) Any pipe laid in pursuance of subsection (3)(a)(ii) or (iii) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
- (12) In this section and section 66C below, references to a qualifying licensed water supplier are references to a licensed water supplier which is the holder of a combined licence (within the meaning of Chapter 1A of Part 2 of this Act).

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## **66C Wholesale water supply by secondary water undertaker**

- (1) This section applies where—
  - (a) a qualifying licensed water supplier—
    - (i) requests a water undertaker other than its primary water undertaker (the “secondary water undertaker”) to provide a supply of water for the purpose of the supplier supplying water, using the primary water undertaker’s supply system, to the premises of the supplier’s customers in accordance with the retail authorisation; and
    - (ii) requests its primary water undertaker to permit it to introduce that water into its supply system; and
  - (b) the premises are in the area of the primary water undertaker.
- (2) Where this section applies—
  - (a) it shall be the duty of the secondary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
    - (i) to take any such steps in respect of its supply system as may be so provided for in order to enable it to provide the requested supply; and
    - (ii) having taken any such steps, to provide that supply; and
  - (b) it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
    - (i) to take any such steps specified in subsection (3) below as may be so provided for in order to enable the licensed water supplier to make the introduction of the requested supply of water into the primary water undertaker’s supply system; and
    - (ii) having taken any such steps, to permit the introduction of that supply of water into that supply system.
- (3) The steps mentioned in subsection (2)(b)(i) above are steps—
  - (a) for the purpose of connecting the premises in question with the primary water undertaker’s supply system;
  - (b) for the purpose of connecting that system with the secondary water undertaker’s supply system; or
  - (c) in respect of the primary water undertaker’s supply system.
- (4) If the first or second condition is satisfied—
  - (a) a secondary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier; and
  - (b) a primary water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable the licensed water supplier to make such an introduction.
- (5) The first condition is that the provision of the supply or permitting the introduction would—
  - (a) require the undertaker in question, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or

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- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) This second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
  - (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.
- (7) Where—
- (a) requests have been made by a licensed water supplier to its primary water undertaker and secondary water undertaker for the purposes of subsection (1) above; and
  - (b) the steps which either of those undertakers is required to take by virtue of the request made to it include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the undertaker's failure to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.
- (8) Any pipe laid in pursuance of subsection (2)(b)(i) above by virtue of subsection (3) (b) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.

#### **66D Sections 66A to 66C: determinations and agreements**

- (1) The Authority may determine, in a case referred to it by a licensed water supplier, whether any condition specified in section 66A(4) to (6), 66B(5) or (6) or 66C(5) or (6) above is satisfied (subject to section 66F below).
- (2) The period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are—
- (a) those which are—
    - (i) in a case falling within section 66A(2) or 66B(3) above, agreed between the water undertaker and the licensed water supplier in question; and
    - (ii) in a case falling within section 66C(2) above, agreed between the water undertakers and the licensed water supplier in question; or
  - (b) in default of such agreement, those which are determined by the Authority, in a case referred to it by the licensed water supplier in question, if they are acceptable to the supplier,
- (subject to the following provisions of this section and sections 66E and 66F below).
- (3) The charges payable by a licensed water supplier to a water undertaker under an agreement under paragraph (a)(i) or (ii) of subsection (2) above or a determination under paragraph (b) of that subsection shall be fixed in accordance with the costs principle set out in section 66E below.

*Status: Point in time view as at 01/04/2016.*

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- (4) The Authority shall issue guidance in accordance with which the terms and conditions of an agreement under paragraph (a)(i) or (ii) of subsection (2) above shall be made.
- (5) Before issuing guidance under subsection (4) above, the Authority shall consult such persons as it considers appropriate.
- (6) The guidance issued under subsection (4) above shall include guidance with respect to the fixing of charges in accordance with subsection (3) above.
- (7) Subsection (8) below applies if it appears to the Authority that an agreement under paragraph (a)(i) or (ii) of subsection (2) above has not been made in accordance with—
  - (a) subsection (3) above; or
  - (b) the guidance issued under subsection (4) above.
- (8) The Authority may require the parties to the agreement to—
  - (a) modify the agreement; or
  - (b) terminate the agreement,
 and that requirement shall be enforceable under section 18 above by the Authority.
- (9) Neither the [<sup>F125</sup>CMA] nor the Authority may exercise, in respect of an agreement under paragraph (a)(i) or (ii) of subsection (2) above, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements); and
  - (b) subsection (2) of section 35 of that Act (interim directions).
- (10) Subsection (9)(b) above does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement under paragraph (a)(i) or (ii) of subsection (2) above; and
  - (b) in respect of which subsection (1)(b) of section 35 of that Act applies.

#### Textual Amendments

**F125** Word in s. 66D(9) 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. 88](#) (with art. 3)

#### <sup>F126</sup>66DA Codes in respect of section 66D agreements

- (1) The Authority may issue one or more codes in respect of section 66D agreements.
- (2) A code may make provision about—
  - (a) procedures in connection with making a section 66D agreement;
  - (b) procedures in connection with varying or terminating a section 66D agreement;
  - (c) the terms and conditions of a section 66D agreement, including terms as to the duration of such an agreement;
  - (d) principles for determining the terms and conditions that should or should not be incorporated into a section 66D agreement.

*Status: Point in time view as at 01/04/2016.*

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- (3) A code may make provision about the steps to be taken by the Authority in determining for the purposes of section 66D(2) whether a water undertaker is, in the particular case, required to perform a duty under sections 66A to 66C.
- (4) If the Authority considers that a water undertaker or a water supply licensee is not acting as required by a code, the Authority may give the undertaker or the licensee a direction to do, or not to do, a thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
- (6) It is the duty of a water undertaker or a water supply licensee to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make—
  - (a) different provision for different persons or descriptions of person;
  - (b) different provision for different duties under sections 66A to 66C.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to section 66D agreements made before the revised code comes into effect.

#### Textual Amendments

**F126** Ss. 66DA-66DC inserted (1.9.2015 for the insertion of s. 66DB in part, 1.9.2015 for the insertion of s. 66DB(3), 1.4.2016 for the insertion of s. 66DB(1)(b) so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 4](#); [S.I. 2015/773](#), art. 3(c) (with art. 5); [S.I. 2015/1469](#), art. 3(d)(i); [S.I. 2016/465](#), art. 2(j)(i) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

#### **66DB Codes under section 66DA: procedure**

- (1) Before issuing a code under section 66DA, the Authority must—
  - (a) prepare a draft of the proposed code under section 66DA;
  - (b) consult persons in accordance with subsections (2) to (4).
- (2) If the proposed code relates to section 66D agreements made with water undertakers whose areas are wholly or mainly in England, the Authority must consult the following about the proposed code—
  - (a) the Secretary of State;
  - (b) the Chief Inspector of Drinking Water;
  - (c) the appropriate agency;
  - (d) the Council;
  - (e) any relevant undertakers likely to be affected by the proposed code;
  - (f) any water supply licensees likely to be affected by the proposed code;
  - (g) such other persons as the Authority thinks appropriate.
- (3) If the proposed code relates to section 66D agreements made with water undertakers whose areas are wholly or mainly in Wales, the Authority must consult the following about the proposed code—
  - (a) the Welsh Ministers;

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- (b) the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies;
  - (c) the appropriate agency;
  - (d) the Council;
  - (e) any relevant undertakers likely to be affected by the proposed code;
  - (f) any water supply licensees likely to be affected by the proposed code;
  - (g) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (5) Before a code under section 66DA prepared by the Authority is issued, the Minister may direct the Authority—
- (a) not to issue the code, or
  - (b) to issue the code with specified modifications.
- (6) Subsection (5) is subject to subsections (8) and (9).
- (7) In subsection (5) “the Minister” means—
- (a) the Secretary of State, so far as a code prepared by the Authority relates to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to section 66D agreements not falling within paragraph (a) or (b).
- (8) If the power under subsection (5) is exercised to give a direction in respect of such section 66D agreements as are referred to in paragraph (a), (b) or (c) of subsection (7), it may not be exercised again in respect of such section 66D agreements as are referred to in that paragraph.
- (9) If the power under subsection (5) to give a direction in respect of such section 66D agreements as are referred to in paragraph (a), (b) or (c) of subsection (7) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such section 66D agreements as are referred to in that paragraph on a later occasion.
- (10) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code prepared by the Authority in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (11) In this section “the appropriate agency” means—
- (a) the Environment Agency, in relation to section 66D agreements made with water undertakers whose areas are wholly in England;
  - (b) the NRBW, in relation to section 66D agreements made with water undertakers whose areas are wholly in Wales;
  - (c) both the Environment Agency and the NRBW, in relation to section 66D agreements made with water undertakers whose areas are partly in England and partly in Wales.



*Status: Point in time view as at 01/04/2016.*

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(12) This section is subject to section 66DC.

#### Textual Amendments

**F126** Ss. 66DA-66DC inserted (1.9.2015 for the insertion of s. 66DB in part, 1.9.2015 for the insertion of s. 66DB(3), 1.4.2016 for the insertion of s. 66DB(1)(b) so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 4](#); [S.I. 2015/773](#), art. 3(c) (with art. 5); [S.I. 2015/1469](#), art. 3(d)(i); [S.I. 2016/465](#), art. 2(j)(i) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

### 66DC Codes under section 66DA: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 66DB does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.]

#### Textual Amendments

**F126** Ss. 66DA-66DC inserted (1.9.2015 for the insertion of s. 66DB in part, 1.9.2015 for the insertion of s. 66DB(3), 1.4.2016 for the insertion of s. 66DB(1)(b) so far as not already in force) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 4](#); [S.I. 2015/773](#), art. 3(c) (with art. 5); [S.I. 2015/1469](#), art. 3(d)(i); [S.I. 2016/465](#), art. 2(j)(i) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

### [<sup>F127</sup> 66E Rules about charges

- (1) The Authority must issue rules about charges that may be imposed by a water undertaker under a section 66D agreement.
- (2) The rules may in particular make provision about—
  - (a) the types of charges that may be imposed;
  - (b) the amount or the maximum amount, or methods for determining the amount or maximum amount, of any type of charge;
  - (c) principles for determining what types of charges may or may not be imposed;
  - (d) principles for determining the amount of any charge that may be imposed;

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- (e) publication of the charges that may be imposed.
- (3) The rules must include provision for and in connection with requiring a water undertaker to impose on a water supply licensee only such charges as would enable the licensee, where the services it provides to a person under its retail authorisation or restricted retail authorisation are services to which a section 142(2)(b) agreement would apply if the undertaker had continued to provide the services, to charge for those services at the same rate or rates as would have applied if the section 142(2)(b) agreement had applied.
- (4) In subsection (3) “section 142(2)(b) agreement” means an agreement to which section 142(2)(b) applies.
- (5) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may—
- (a) give the undertaker a direction to do, or not to do, a thing specified in the direction, or
  - (b) in a case where a section 66D agreement to which the undertaker is party requires modification in order to conform to the rules, give a direction to the undertaker and the water supply licensee in question to modify the agreement.
- (6) It is the duty of a water undertaker or a water supply licensee to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
- (7) The rules may—
- (a) make different provision for different persons or descriptions of person;
  - (b) make different provision for different purposes;
  - (c) make provision subject to exceptions.
- (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (9) The Authority must issue revised rules if—
- (a) guidance is issued under section 66ED, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (10) Revised rules may include provision for applying any of their revisions to section 66D agreements made before the revised rules come into effect.]

#### Textual Amendments

**F127** Ss. 66E-66ED substituted for s. 66E (1.9.2015 for the substitution of s. 66EB(1)-(7)) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); S.I. 2015/1469, art. 3(d)(ii)

#### **Rules about charges: provision about the reduction of charges**

**F127 66EA**

- (1) Rules under section 66E may make provision about the reduction of charges payable under a section 66D agreement where—
- (a) a water supply licensee that has a retail authorisation or a restricted retail authorisation is party to the section 66D agreement, and
  - (b) other conditions specified by the rules are satisfied.

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- (2) Rules made by virtue of subsection (1) may in particular—
  - (a) specify conditions relating to any party to the section 66D agreement;
  - (b) specify conditions about persons taking steps for the purpose of reducing or managing water consumption;
  - (c) specify conditions about the premises by reference to which such steps are to be taken;
  - (d) specify conditions about reducing charges payable by a person who—
    - (i) is not party to the section 66D agreement, and
    - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition specified under paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the water undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
  - (a) make provision as to the content of the notice;
  - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
  - (a) the amount of the charge, with and without the reduction;
  - (b) the period for which the reduction has effect.

#### Textual Amendments

**F127** Ss. 66E-66ED substituted for s. 66E (1.9.2015 for the substitution of s. 66EB(1)-(7)) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 5; S.I. 2015/1469, art. 3\(d\)\(ii\)](#)

### **66EB Rules under section 66E: procedure**

- (1) Before issuing rules under section 66E, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any water undertakers likely to be affected by the rules;
  - (e) any water supply licensees likely to be affected by the rules;
  - (f) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 66ED in preparing rules under section 66E.

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- (5) Before rules under section 66E prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
  - (a) the Secretary of State, so far as rules prepared by the Authority relate to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to section 66D agreements not falling within paragraph (a) or (b).
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 66EC.

#### Textual Amendments

**F127** Ss. 66E-66ED substituted for s. 66E (1.9.2015 for the substitution of s. 66EB(1)-(7)) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); S.I. 2015/1469, art. 3(d)(ii)

#### 66EC Rules under section 66E: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 66E and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 66EB does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
  - (a) that period of 14 days expires, or
  - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
 whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised rules, and

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- (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 66EB.

#### Textual Amendments

**F127** Ss. 66E-66ED substituted for s. 66E (1.9.2015 for the substitution of s. 66EB(1)-(7)) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); [S.I. 2015/1469](#), art. 3(d)(ii)

#### **66ED Rules under section 66E: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 66E.
- (2) Before issuing the guidance, the Minister must—
  - (a) prepare a draft of any proposed guidance;
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise guidance issued under this section and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, in relation to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to section 66D agreements not falling within paragraph (a) or (b).]

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### Textual Amendments

**F127** Ss. 66E-66ED substituted for s. 66E (1.9.2015 for the substitution of s. 66EB(1)-(7)) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 2 para. 5](#); S.I. 2015/1469, art. 3(d)(ii)

## 66F Section 66D: supplementary

(1) Before the Authority makes—

- (a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66B(5) or (6) above is satisfied; or
- (b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which a water undertaker is to perform any duty under section 66B above,

it shall consult the Secretary of State (subject to subsection (3) below).

(2) Before the Authority makes—

- (a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66C(5) or (6) is satisfied; or
- (b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which the water undertakers are to perform any duty under section 66C above,

it shall consult [<sup>F128</sup>the persons specified in subsection (2A)].

[ The persons specified for the purposes of subsection (2) are—

- <sup>F129</sup>(2A)
  - (a) the Secretary of State (subject to subsections (3) and (4) below);
  - (b) the Environment Agency, if the determination is in relation to a supply of water that would affect water resources in England;
  - (c) the NRBW, if the determination is in relation to a supply of water that would affect water resources in Wales.]

(3) If—

- (a) a determination mentioned in subsection (1) or (2) above is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales; and
- (b) in the case of a determination mentioned in subsection (2) above, the area of the secondary water undertaker in question is wholly or mainly in Wales,

the Authority shall consult the Assembly (and not the Secretary of State).

(4) If a determination mentioned in subsection (2) above—

- (a) is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in—
  - (i) England; or
  - (ii) Wales;
- (b) but the area of the secondary water undertaker in question is (respectively) wholly or mainly in—
  - (i) Wales; or
  - (ii) England,

the Authority shall consult the Assembly (as well as the Secretary of State).

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) The Authority shall publish guidance issued under section 66D(4) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) The Authority may from time to time revise the guidance so issued.
- (7) Before revising any guidance under subsection (6) above, the Authority shall consult such persons as it considers appropriate.
- (8) Subsection (5) above applies to guidance revised under subsection (6) above as it applies to guidance issued under section 66D(4) above.
- (9) In this section, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.
- (10) Where the period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are determined in accordance with subsection (2)(b) of section 66D above, they shall have effect as if they had been agreed between the parties in question (and references in the following provisions of this Act to an agreement under that section shall be construed accordingly).

#### Textual Amendments

- F128** Words in s. 66F(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 233(2)** (with Sch. 7)
- F129** S. 66F(2A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 233(3)** (with Sch. 7)

### 66G Designation of strategic supply

- (1) Subsection (2) below applies if at any time the Authority determines that an introduction of water which a water undertaker is required to permit under section 66B or 66C above in accordance with an agreement under section 66D above constitutes a strategic supply of water.
- (2) The Authority shall designate the introduction as a strategic supply.
- (3) Subsection (4) below applies if—
  - (a) a water undertaker requests the Authority to make a determination that an introduction of water constitutes a strategic supply for the purposes of subsection (1) above, or
  - (b) the Authority otherwise proposes to make a determination that an introduction of water constitutes a strategic supply for the purposes of that subsection.
- (4) The Authority shall give notice of the request or proposed determination to—
  - (a) the Secretary of State;
  - (b) the Assembly;
  - (c) the Environment Agency<sup>F130</sup>, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in England];  
<sup>F131</sup>(ca) [ the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in Wales;]

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- (d) the other party or parties, or the parties, to the agreement under section 66D above; and
  - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that an introduction designated under this section as a strategic supply no longer constitutes such a supply, it shall cancel its designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that an introduction no longer constitutes a strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, an introduction of water is a strategic supply if, without that introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers<sup>F132</sup>, and supplies which it is obliged to make under section 66A or 66C,] as well as supplying customers of the licensed water supplier in question with water for domestic purposes.

#### Textual Amendments

- F130** Words in s. 66G(4)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 234(2)** (with Sch. 7)
- F131** S. 66G(4)(ca) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 234(3)** (with Sch. 7)
- F132** Words in s. 66G(10) inserted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 7(1)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(j)

#### 66H Designation of collective strategic supply

- (1) Subsection (2) below applies if at any time the Authority determines that two or more introductions of water—
- (a) which are made by a licensed water supplier; and
  - (b) which a water undertaker is required to permit under section 66B or 66C above in accordance with agreements under section 66D above,
- constitute a collective strategic supply of water.
- (2) The Authority shall designate the introductions as a collective strategic supply.
- (3) Subsection (4) below applies if—
- (a) a water undertaker requests the Authority to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of subsection (1) above, or



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- (b) the Authority otherwise proposes to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of that subsection.
- (4) The Authority shall give notice of the request or proposed determination to—
- (a) the Secretary of State;
  - (b) the Assembly;
  - (c) the Environment Agency<sup>F133</sup>, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in England];
  - <sup>F134</sup>(ca) [ the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in Wales;]
  - (d) the other party or parties, or the parties, to the agreements under section 66D above; and
  - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that introductions designated under this section as a collective strategic supply no longer constitute such a supply, it shall cancel their designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that introductions no longer constitute a collective strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, introductions of water are a collective strategic supply if, without those introductions being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers<sup>F135</sup>, and supplies which it is obliged to make under section 66A or 66C,] as well as supplying the customers of the licensed water supplier in question with water for domestic purposes.

#### Textual Amendments

**F133** Words in s. 66H(4)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 235(2)** (with Sch. 7)

**F134** S. 66H(4)(ca) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 235(3)** (with Sch. 7)

**F135** Words in s. 66H(10) inserted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 7(2)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(j)

*Status: Point in time view as at 01/04/2016.*

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## Offences

### 66I Prohibition on unauthorised use of supply system

- (1) Subject to subsections (2) and (3) and section 66K below, no person shall use a water undertaker's supply system for the purpose of supplying water to any premises [<sup>F136</sup>of —
  - (a) a customer,
  - (b) the person so using that system, or
  - (c) a person associated with that person].
- (2) Subsection (1) above shall not apply where the supply is made—
  - (a) by the water undertaker, or
  - (b) by a [<sup>F137</sup>water supply licensee] in pursuance of [<sup>F138</sup>the licensee's licence].
- (3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.
- (4) A person who contravenes subsection (1) above shall be guilty of an offence.
- (5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.
- (6) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.
- (7) No proceedings for an offence under this section shall be instituted except by—
  - (a) the Secretary of State, or
  - (b) the Authority.
- (8) The functions of—
  - (a) making regulations under subsection (3) above; and
  - (b) instituting proceedings under subsection (7)(a) above,
 are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.
- (9) In this section and sections 66J and 66L below, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.

#### Textual Amendments

- F136** Words in s. 66I(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 9\(2\)](#); S.I. 2016/465, art. 2(j)(ii) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F137** Words in s. 66I(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 9\(3\)\(a\)](#); S.I. 2016/465, art. 2(j)(ii) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F138** Words in s. 66I(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 2 para. 9\(3\)\(b\)](#); S.I. 2016/465, art. 2(j)(ii) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

#### Modifications etc. (not altering text)

- C14** S. 66I(1) restricted (1.12.2005) by [The Water Supply \(Exceptions from Supply System Prohibitions\) Regulations 2005 \(S.I. 2005/3075\), reg. 3](#)

*Status: Point in time view as at 01/04/2016.*

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## **66J Prohibition on unauthorised introduction of water**

- (1) Subject to subsections (2) and (3) and section 66K below, no person shall introduce water into a water undertaker's supply system (other than the undertaker itself).
- (2) Subsection (1) above shall not apply where the water is introduced—
  - (a) by a licensed water supplier in pursuance of its licence, or
  - (b) by another water undertaker under an agreement for a supply of water in bulk.
- (3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.
- (4) A person who contravenes subsection (1) above shall be guilty of an offence.
- (5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.
- (6) A person guilty of an offence under this section shall be liable [<sup>F139</sup>on summary conviction, or on conviction on indictment, to a fine].
- (7) For the purposes of section 210 below, the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.
- (8) No proceedings for an offence under this section shall be instituted except by—
  - (a) the Secretary of State; or
  - (b) the Authority.
- (9) The functions of—
  - (a) making regulations under subsection (3) above; and
  - (b) instituting proceedings under subsection (8)(a) above,are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

### **Textual Amendments**

**F139** Words in s. 66J(6) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 23(2)** (with reg. 5(1))

### **Modifications etc. (not altering text)**

**C15** S. 66J(1) restricted (1.12.2005) by [The Water Supply \(Exceptions from Supply System Prohibitions\) Regulations 2005 \(S.I. 2005/3075\)](#), **reg. 4**

## **66K Sections 66I and 66J: exemptions**

- (1) The Secretary of State may by order made by statutory instrument grant exemption from section 66I(1) or 66J(1) above to—
  - (a) a person or persons of a class;
  - (b) generally or to such extent as may be specified in the order; and
  - (c) unconditionally or subject to such conditions as may be so specified.

*Status: Point in time view as at 01/04/2016.*

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- (2) Before making an order under subsection (1) above the Secretary of State shall give notice—
- (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
  - (b) stating the reasons why he proposes to make the order in the terms proposed; and
  - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (3) The notice required by subsection (2) above shall be given—
- (a) by serving a copy of it on the Authority; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.
- (4) Notice of an exemption granted to a person shall be given—
- (a) by serving a copy of the exemption on him; and
  - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
- (a) persons of that class; and
  - (b) other persons who may be affected by it.
- (6) An exemption may be granted—
- (a) indefinitely; or
  - (b) for a period specified in, or determined by or under, the exemption.
- (7) Conditions included in an exemption by virtue of subsection (1)(c) above may, in particular, require any person carrying on any activity in pursuance of the exemption—
- (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
  - (b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
  - (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

**66L Section 66K: supplementary**

- (1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a person under section 66K(1) above or vary

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- an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (2) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to persons of a class under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) in accordance with any provision of the order by which the exemption was granted; or
  - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a class under section 66K(1) above from any person of that class—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (4) Before making an order under subsection (1)(b) or (c) or (2) above or giving a direction under subsection (3)(b) or (c) above, the Secretary of State shall—
- (a) consult the Authority; and
  - (b) give notice—
    - (i) stating that he proposes to make such an order or give such a direction;
    - (ii) stating the reasons why he proposes to make such an order or give such a direction; and
    - (iii) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (5) The notice under subsection (4) above shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c) above, by serving a copy of it on the person to whom the exemption was granted;
  - (b) where he is proposing to make an order under subsection (2) above, by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and
  - (c) where he is proposing to give a direction under subsection (3)(b) or (c) above, by serving a copy of it on the person from whom he proposes to withdraw the exemption.

*Status: Point in time view as at 01/04/2016.*

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- (6) A statutory instrument containing an order under subsection (1) or (2) above or subsection (1) of section 66K above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The power to—
- (a) make an order under subsection (1) or (2) above or subsection (1) of section 66K above; or
  - (b) give a direction under subsection (3) above,
- is exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.
- (8) Accordingly, subsections (1) to (5) above and section 66K above apply in relation to an order made or a direction given by the Assembly by virtue of subsection (7) above as they apply in relation to an order made or direction given by the Secretary of State.]

### CHAPTER III

#### QUALITY AND SUFFICIENCY OF SUPPLIES

##### *Standards of wholesomeness*

#### 67 Standards of wholesomeness.

- (1) The Secretary of State may by regulations make provision that water that is supplied to any premises is or is not to be regarded as wholesome for the purposes of this Chapter if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for the purpose of determining the wholesomeness of any water—
- (a) prescribe general requirements as to the purposes for which the water is to be suitable;
  - (b) prescribe specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
  - (c) prescribe specific requirements as to other characteristics of the water;
  - (d) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;
  - (e) enable the Secretary of State to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition; and
  - (f) enable the Secretary of State to authorise a local authority (either instead of the Secretary of State or concurrently with him) to exercise in relation to a private supply any power conferred on the Secretary of State by regulations made by virtue of paragraph (e) above.

#### **Subordinate Legislation Made**

**P1** S. 67: ss. 67 and 77(3) (with ss. 77(4) and 213(2)) power exercised by [S.I.1991/2790](#)

*Status: Point in time view as at 01/04/2016.*

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#### Modifications etc. (not altering text)

- C16** S. 67 applied by S.I. 2000/2531, reg. 2(2)(c) (as inserted (1.10.2009) by The Building and Approved Inspectors (Amendment) Regulations 2009 (S.I. 2009/1219), reg. 2(2)(b))
- C17** S. 67 applied (1.10.2010) by The Building Regulations 2010 (S.I. 2010/2214), regs. 1, 2(5) (with reg. 9)

### General obligations of undertakers <sup>F140</sup> and <sup>F141</sup> water supply licensees]]

#### Textual Amendments

- F140** Words in s. 68 cross-heading inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 8 para. 18(8); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F141** Words in s. 68 cross-heading substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 66; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

## 68 Duties of water undertakers <sup>F142</sup> and <sup>F143</sup> water supply licensees]] with respect to water quality.

- (1) It shall be the duty of a water undertaker <sup>F144</sup> where its supply system is used for the purpose of supplying water to any premises for domestic or food production purposes]—
- (a) <sup>F145</sup> to ensure that any water so supplied] is wholesome at the time of supply; and
- (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which <sup>F146</sup> water is so supplied], that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources.

<sup>F147</sup> and this section and section 69 below apply, in relation to the duty of an undertaker, whether or not the water supplied using the undertaker's supply system is supplied by the undertaker.]

<sup>F148</sup>(1A) It shall be the duty of a <sup>F149</sup> water supply licensee]—

- (a) when supplying water to any premises for domestic or food production purposes, in accordance with <sup>F150</sup> the licensee's retail authorisation or restricted retail authorisation], to ensure that the water is wholesome at the time of supply; and
- (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which <sup>F151</sup> that licensee] supplies water to premises for domestic or food production purposes, in accordance with <sup>F152</sup> the licensee's retail authorisation or restricted retail authorisation], that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources,

<sup>F153</sup> ...]

- (2) For the purposes of this section and section 69 below and subject to subsection (3) below, <sup>F154</sup> where a water undertaker's supply system is used for the purpose of supplying water to any premises, any water so supplied] to any premises shall not be regarded as unwholesome at the time of supply where it has ceased to be wholesome only after leaving the undertaker's pipes.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) For the purposes of [F155 subsection (1) above where a water undertaker’s supply system is used for the purpose of supplying water to any premises, and the water so supplied] would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—
- (a) it has ceased to be wholesome after leaving the undertaker’s pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and
  - (b) it has so ceased in consequence of the failure of the undertaker, before [F156 the water is supplied, to ensure that such steps are taken] as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the undertaker’s pipes.
- [F157(3A) For the purposes of subsection (1A) above where water supplied by a [F158 water supply licensee] to any premises would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—
- (a) it has ceased to be wholesome after leaving the relevant pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and
  - (b) it has so ceased in consequence of the failure of [F159 the licensee], before supplying the water, to ensure that such steps are taken as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the relevant pipes.
- (3B) In subsection (3A) above “relevant pipes” means the pipes of the water undertaker whose supply system is used for the purpose of the supply made by the [F160 water supply licensee].]
- (4) The provisions of this section shall apply in relation to water which is supplied by a water undertaker whether or not the water is water which the undertaker is required to supply by virtue of any provision of this Act.
- (5) The duties of a water undertaker [F161 and [F162 water supply licensee]] under this section shall be enforceable under section 18 above by the Secretary of State.
- [F163(6) References in this section to a retail authorisation or a restricted retail authorisation are to be construed in accordance with Schedule 2A.
- (7) In this section “prescribed” means—
- (a) in relation to a water undertaker whose area is wholly or mainly in Wales, and
  - (b) in relation to a water supply licensee so far as relating to licensed activities using the supply system of such a water undertaker,
- prescribed by regulations made by the Welsh Ministers by statutory instrument, which is subject to annulment in pursuance of a resolution of the Assembly.]

#### Textual Amendments

**F142** S. 68: words in sidenote inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 18(8)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

**F143** Words in s. 68 title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 67(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)



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- F144** Words in s. 68(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F145** Words in s. 68(1)(a) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F146** Words in s. 68(1)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(2)(c)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F147** Words in s. 68(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(2)(d)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F148** S. 68(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F149** Words in s. 68(1A) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(3)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F150** Words in s. 68(1A)(a) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(3)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F151** Words in s. 68(1A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(3)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F152** Words in s. 68(1A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(3)(d)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F153** Words in s. 68(1A) repealed (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(3)(e)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F154** Words in s. 68(2) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F155** Words in s. 68(3) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(5)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F156** Words in s. 68(3)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(5)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F157** S. 68(3A)(3B) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(6)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F158** Words in s. 68(3A) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(4)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F159** Words in s. 68(3A)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(4)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F160** Words in s. 68(3B) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F161** Words in s. 68(5) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 18(7)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F162** Words in s. 68(5) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(6)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F163** S. 68(6)(7) inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 67(7)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

## 69 Regulations for preserving water quality.

- (1) The Secretary of State may by regulations require a water undertaker [<sup>F164</sup> or a [<sup>F165</sup> water supply licensee] to ensure that such steps are taken] as may be prescribed for the purpose of securing compliance with section 68 above.

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- (2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may impose an obligation on a water undertaker [<sup>F166</sup>or [<sup>F167</sup>water supply licensee]]—
- (a) to [<sup>F168</sup>ensure that all such steps are taken] as may be prescribed for monitoring and recording whether the water [<sup>F169</sup>used for relevant supplies] to premises for domestic or food production purposes is wholesome at the time of supply;
  - (b) to [<sup>F170</sup>ensure that all such steps are taken] as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which [<sup>F171</sup>is used or is proposed to be used for making relevant supplies] to any premises for domestic or food production purposes;
  - (c) to ensure that a source which [<sup>F172</sup>is used or proposed to be used for making relevant supplies] for domestic or food production purposes is not so used until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;
  - (d) to [<sup>F173</sup>ensure that records are kept] of the localities within which all the premises [<sup>F174</sup>receiving relevant supplies] for domestic or food production purposes [<sup>F175</sup>. . . are normally supplied from the same source or combination of sources];
  - (e) to [<sup>F176</sup>ensure that prescribed requirements are complied with] with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.
- (3) Without prejudice to subsections (1) and (2) above, the Secretary of State may by regulations make provision [<sup>F177</sup>imposing obligations on water undertakers or [<sup>F178</sup>water supply licensees] with respect to the use for the purposes of or in connection with making relevant supplies]—
- (a) of such processes and substances; and
  - (b) of products that contain or are made with such substances or materials,
- as he considers might affect the quality of any water.
- (4) Without prejudice to the generality of the power conferred by subsection (3) above, regulations under that subsection may—
- (a) [<sup>F179</sup>require water undertakers or [<sup>F180</sup>water supply licensees] to ensure that] processes, substances and products which have not been approved under the regulations or which contravene the regulations [<sup>F181</sup>are not used for the purposes of or in connection with relevant supplies];
  - (b) for the purposes of provision made by virtue of paragraph (a) above, require [<sup>F182</sup>water undertakers and [<sup>F183</sup>water supply licensees] to ensure that] processes, substances and products used [<sup>F184</sup>for the purposes of or in connection with relevant supplies] conform to such standards as may be prescribed by or approved under the regulations;
  - (c) impose such other requirements as may be prescribed with respect to the use [<sup>F185</sup>for the purposes of or in connection with relevant supplies] of prescribed processes, substances and products;
  - (d) provide for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations, for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition;
  - (e) impose obligations to furnish prescribed persons with information reasonably required by those persons for the purpose of carrying out functions under the regulations;

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- (f) provide for a contravention of the regulations to constitute—
- (i) a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed; or
  - (ii) an offence triable either way and punishable, on summary conviction, by a fine not exceeding the statutory maximum and, on conviction on indictment, by a fine;
- and
- (g) require prescribed charges to be paid to persons carrying out functions under the regulations.
- (5) The Secretary of State may by regulations <sup>F186</sup> . . . —
- (a) [<sup>F187</sup>require a water undertaker]to publish information about the quality of water supplied for domestic or food production purposes to any premises [<sup>F188</sup>using that undertaker’s supply system]; <sup>F189</sup> . . .
  - <sup>F190</sup>(aa) require a [<sup>F191</sup>water supply licensee] to publish information about the quality of water supplied for domestic or food production purposes to any premises by [<sup>F192</sup>that licensee].
  - (b) [<sup>F193</sup>require any such undertaker [<sup>F194</sup>or licensee]] to provide information to prescribed persons about the quality of water [<sup>F195</sup>supplied as referred to in paragraph (a) or (aa) above (as the case may be)].
- (6) Regulations under subsection (5) above—
- (a) shall prescribe both the information which is to be published or provided in pursuance of the regulations and the manner and circumstances in which it is to be published or provided;
  - (b) may require the provision of information by a water undertaker [<sup>F196</sup>or [<sup>F197</sup>water supply licensee]] to any person to be free of charge or may authorise it to be subject to the payment by that person to the undertaker [<sup>F198</sup>or licensee] of a prescribed charge; and
  - (c) may impose such other conditions on the provision of information by a water undertaker [<sup>F199</sup>or [<sup>F200</sup>water supply licensee]] to any person as may be prescribed.
- <sup>F201</sup>(7) In this section, “relevant supplies” means—
- (a) in the case of an obligation imposed on a water undertaker, supplies of water—
    - (i) made by the undertaker in carrying out its functions; or
    - (ii) made by a [<sup>F202</sup>water supply licensee] using the undertaker’s supply system; and
  - (b) in the case of an obligation imposed on a [<sup>F203</sup>water supply licensee], supplies of water made by that supplier using a water undertaker’s supply system.]

#### Textual Amendments

**F164** Words in s. 69(1) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 19\(2\)](#); S.I. 2004/641, [art. 3\(y\)](#), Sch. 2

**F165** Words in s. 69(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 68\(2\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

**F166** Words in s. 69(2) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 19\(3\)\(a\)](#); S.I. 2004/641, [art. 3\(y\)](#), Sch. 2

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- F167** Words in s. 69(2) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(m)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F168** Words in s. 69(2)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(b)(i)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F169** Words in s. 69(2)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F170** Words in s. 69(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(c)(i)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F171** Words in s. 69(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(c)(ii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F172** Words in s. 69(2)(c) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(d)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F173** Words in s. 69(2)(d) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(e)(i)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F174** Words in s. 69(2)(d) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(e)(ii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F175** Words in s. 69(2)(d) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(3)(e)(iii)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F176** Words in s. 69(2)(e) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(3)(f)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F177** Words in s. 69(3) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(4)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F178** Words in s. 69(3) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(m)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F179** Words in s. 69(4)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(a)(i)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F180** Words in s. 69(4)(a) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(m)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F181** Words in s. 69(4)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(a)(ii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F182** Words in s. 69(4)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(b)(i)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F183** Words in s. 69(4)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(m)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F184** Words in s. 69(4)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F185** Words in s. 69(4)(c) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(5)(c)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F186** Words in s. 69(5) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(6)(a)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F187** Words in s. 69(5)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), {**Sch. 8 para. 19(6)(b)(i)**}; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F188** Words in s. 69(5)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(b)(ii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F189** Words in s. 69(5)(a) omitted (1.4.2004) by virtue of and repealed (prosp.) by Water Act 2003 (c. 37), ss. 101(1)(2), 105(3), **Sch. 8 para. 19(6)(c)**, **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F190** S. 69(5)(aa) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 19(6)(d)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2**
- F191** Words in s. 69(5)(aa) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 68(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(m)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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- F192** Words in s. 69(5)(aa) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 68\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F193** Words in s. 69(5)(b) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 19\(6\)\(e\)\(i\)](#); S.I. 2004/641, [art. 3\(y\)](#), [Sch. 2](#)
- F194** Words in s. 69(5)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 68\(5\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F195** Words in s. 69(5)(b) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 19\(6\)\(e\)\(ii\)](#); S.I. 2004/641, [art. 3\(y\)](#), [Sch. 2](#)
- F196** Words in s. 69(6)(b) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 19\(7\)\(a\)\(i\)](#); S.I. 2004/641, [art. 3\(y\)](#), [Sch. 2](#)
- F197** Words in s. 69(6)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 68\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F198** Words in s. 69(6)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 68\(5\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F199** Words in s. 69(6)(c) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 19\(7\)\(b\)](#); S.I. 2004/641, [art. 3\(y\)](#), [Sch. 2](#)
- F200** Words in s. 69(6)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 68\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F201** S. 69(7) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 19\(8\)](#); S.I. 2004/641, [art. 3\(y\)](#), [Sch. 2](#)
- F202** Words in s. 69(7)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 68\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F203** Words in s. 69(7)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 68\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

## 70 Offence of supplying water unfit for human consumption.

- (1) Subject to subsection (3) below, where a [<sup>F204</sup>water undertaker’s supply system is used for the purposes of supplying water] to any premises and that water is unfit for human consumption, [<sup>F205</sup>the relevant persons] shall be guilty of an offence and liable [<sup>F206</sup>on summary conviction, or on conviction on indictment, to a fine].

[<sup>F207</sup>(1A) For the purposes of subsection (1) above, the relevant persons are—

- (a) the water undertaker whose supply system is used for the purposes of supplying the water (in this section referred to as the “primary water undertaker”); and
- (b) any employer of persons, or any self-employed person, who is concerned in the supply of the water.]
- (2) For the purposes of section 210 below and any other enactment under which an individual is guilty of an offence by virtue of subsection (1) above the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.
- (3) In any proceedings against any [<sup>F208</sup>relevant person] for an offence under this section it shall be a defence for [<sup>F209</sup>that person] to show that it—
- (a) had no reasonable grounds for suspecting that the water would be used for human consumption; or

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- (b) took all reasonable steps and exercised all due diligence for securing that the water was fit for human consumption on leaving [F210the primary water undertaker's] pipes or was not used for human consumption.

[F211(3A) For the purposes of paragraph (b) of subsection (3) above—

- (a) in the case of proceedings against a primary water undertaker, showing that the undertaker took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that the relevant arrangements were reasonable in all the circumstances; and
- (b) in the case of proceedings against any other relevant person, showing that the person took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that it took all reasonable steps and exercised all due diligence for securing that all aspects of the relevant arrangements for which it was responsible were properly carried out.

(3B) In subsection (3A) above, “relevant arrangements” means arrangements made by the primary water undertaker to ensure that all other relevant persons were required to take all reasonable steps and exercise all due diligence for securing that the water was fit for human consumption on leaving the undertaker’s pipes or was not used for human consumption.]

(4) Proceedings for an offence under this section shall not be instituted except by the Secretary of State or the Director of Public Prosecutions.

#### Textual Amendments

- F204** Words in s. 70(1) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(2\)\(a\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with art. 4, Sch.)
- F205** Words in s. 70(1) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(2\)\(b\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with art. 4, Sch.)
- F206** Words in s. 70(1) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 4 para. 23\(3\)](#) (with reg. 5(1))
- F207** S. 70(1A) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(3\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with art. 4, Sch.)
- F208** Words in s. 70(3) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(4\)\(a\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with art. 4, Sch.)
- F209** Words in s. 70(3) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(4\)\(b\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with art. 4, Sch.)
- F210** Word in s. 70(3)(b) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(4\)\(c\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with art. 4)
- F211** S. 70(3A)(3B) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 20\(5\)](#); S.I. 2004/2528, [art. 2\(t\)\(iv\)](#) (with art. 4, Sch.)

*Waste, contamination, misuse etc.*

## 71 Waste from water sources.

(1) Subject to subsections (2) and (3) below, a person shall be guilty of an offence under this section if—

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- (a) he causes or allows any underground water to run to waste from any well, borehole or other work; or
  - (b) he abstracts from any well, borehole or other work water in excess of his reasonable requirements.
- (2) A person shall not be guilty of an offence by virtue of subsection (1)(a) above in respect of anything done for the purpose—
  - (a) of testing the extent or quality of the supply; or
  - (b) of cleaning, sterilising, examining or repairing the well, borehole or other work in question.
- (3) Where underground water interferes or threatens to interfere with the carrying out or operation of any underground works (whether waterworks or not), it shall not be an offence under this section, if no other method of disposing of the water is reasonably practicable, to cause or allow the water to run to waste so far as may be necessary for enabling the works to be carried out or operated.
- (4) A person who is guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) On the conviction of a person under this section, the court may—
  - (a) order that the well, borehole or other work to which the offence relates shall be effectively sealed; or
  - (b) make such other order as appears to the court to be necessary to prevent waste of water.
- (6) If any person fails to comply with an order under subsection (5) above, then, without prejudice to any penalty for contempt of court, the court may, on the application of [<sup>F212</sup>the [<sup>F213</sup>appropriate agency]], authorise [<sup>F214</sup>the appropriate agency] to take such steps as may be necessary to execute the order; and any expenses incurred in taking any such steps shall be recoverable summarily as a civil debt from the person convicted.
- (7) Any person designated for the purpose by [<sup>F215</sup>the [<sup>F213</sup>appropriate agency]] shall, on producing some duly authenticated document showing his authority, have a right at all reasonable times—
  - (a) to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this section on or in connection with the premises;
  - (b) to enter any premises for the purpose of executing any order of the court under this section which [<sup>F215</sup>the [<sup>F213</sup>appropriate agency]] has been authorised to execute in those premises.
- (8) Part I of Schedule 6 to this Act shall apply to the rights of entry conferred by subsection (7) above.
- [<sup>F216</sup>(9) In this section “the appropriate agency” means—
  - (a) the Environment Agency, in relation to a well, borehole or other work in England;
  - (b) the NRBW, in relation to a well, borehole or other work in Wales.]

#### Textual Amendments

**F212** Words in s. 71(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 101(1)(a) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

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- F213** Words in s. 71 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 236(2)** (with Sch. 7)
- F214** Words in s. 71(6) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 236(3)** (with Sch. 7)
- F215** Words in s. 71(7) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 101(2)** (with ss. 7(6), 115, 117): [S.I. 1996/186](#), **art. 3**
- F216** S. 71(9) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 236(4)** (with Sch. 7)

## 72 Contamination of water sources.

- (1) Subject to subsections (2) and (3) below, a person is guilty of an offence under this section if he is guilty of any act or neglect whereby the water in any waterworks which is used or likely to be used—
  - (a) for human consumption or domestic purposes; or
  - (b) for manufacturing food or drink for human consumption,
 is polluted or likely to be polluted.
- (2) Nothing in this section shall be construed as restricting or prohibiting any method of cultivation of land which is in accordance with the principles of good husbandry.
- (3) Nothing in this section shall be construed as restricting or prohibiting the reasonable use of oil or tar on any highway maintainable at public expense so long as the highway authority take all reasonable steps for preventing—
  - (a) the oil or tar; and
  - (b) any liquid or matter resulting from the use of the oil or tar,
 from polluting the water in any waterworks.
- (4) A person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued after conviction;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (5) In this section “waterworks” includes—
  - (a) any spring, well, adit, borehole, service reservoir or tank; and
  - (b) any main or other pipe or conduit of a water undertaker; and
  - (c) any pipe or conduit of a [<sup>F217</sup>water supply licensee].

### Textual Amendments

- F217** Words in s. 72(5)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 69**; [S.I. 2016/465](#), art. 2(m), **Sch. 1 para. 1(m)** (with Sch. 2) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

### Modifications etc. (not altering text)

- C18** S. 72 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. 1 para. 8** (with ss. 42, 46).
- C19** S. 72 modified by [S.I. 2010/675](#), Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)



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### 73 Offences of contaminating, wasting and misusing water etc.

(1) If any person who is the owner or occupier of any premises to which a supply of water is provided by a water undertaker [<sup>F218</sup>or [<sup>F219</sup>water supply licensee]] intentionally or negligently causes or suffers any water fitting for which he is responsible to be or remain so out of order, so in need of repair or so constructed or adapted, or to be so used—

- (a) that water in a water main or other pipe of a water undertaker, or in a pipe connected with such a water main or pipe, is or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
- (b) that water that has been supplied by the undertaker [<sup>F220</sup>or [<sup>F221</sup>licensee]] to those premises is or is likely to be contaminated before it is used; or
- (c) that water so supplied is or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

[<sup>F222</sup>(1A) In any proceedings under subsection (1) above it shall be a defence to prove—

- (a) that the contamination or likely contamination, or the wastage, misuse or undue consumption, was caused (wholly or mainly) by the installation, alteration, repair or connection of the water fitting on or after 1st July 1999;
- (b) that the works were carried out by or under the direction of an approved contractor within the meaning of the Water Supply (Water Fittings) Regulations 1999; and
- (c) that the contractor certified to the person who commissioned those works that the water fitting complied with the requirements of those regulations.]

(2) Any person who uses any water supplied to any premises by a water undertaker for a purpose other than one for which it is supplied to those premises shall, unless the other purpose is the extinguishment of a fire, be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(3) Where a person has committed an offence under subsection (2) above, the water undertaker in question shall be entitled to recover from that person such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(4) For the purposes of this section the owner or occupier of any premises shall be regarded as responsible for every water fitting on the premises which is not a water fitting which a person other than the owner or, as the case may be, occupier is liable to maintain.

#### Textual Amendments

**F218** Words in s. 73(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 22\(a\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))

**F219** Words in s. 73(1) substituted (1.4.2016) by [Explanatory Note 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 70\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

**F220** Words in s. 73(1)(b) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 22\(b\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))

**F221** Word in s. 73(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 70\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

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**F222** S. 73(1A) inserted (1.7.1999) by **S.I. 1999/1148, reg. 8**

#### **74 Regulations for preventing contamination, waste etc. and with respect to water fittings.**

- (1) The Secretary of State may by regulations make such provision as he considers appropriate for any of the following purposes, that is to say—
- (a) for securing—
    - (i) that water in a water main or other pipe of a water undertaker is not contaminated; and
    - (ii) that its quality and suitability for particular purposes is not prejudiced, by the return of any substance from any premises to that main or pipe;
  - (b) for securing that water which is in any pipe connected with any such main or other pipe or which has been supplied to any premises by a water undertaker [<sup>F223</sup>or [<sup>F224</sup>water supply licensee]] is not contaminated, and that its quality and suitability for particular purposes is not prejudiced, before it is used;
  - (c) for preventing the waste, undue consumption and misuse of any water at any time after it has left the pipes of a water undertaker for the purpose of being supplied by that undertaker [<sup>F225</sup>or [<sup>F226</sup>that or another water supply licensee]] to any premises; and
  - (d) for securing that water fittings installed and used by persons to whom water is or is to be supplied by a water undertaker [<sup>F227</sup>or [<sup>F228</sup>water supply licensee]] are safe and do not cause or contribute to the erroneous measurement of any water or the reverberation of any pipes.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for any of the purposes specified in that subsection, make provision in relation to such water fittings as may be prescribed—
- (a) for forbidding the installation, connection or use of the fittings if they have not been approved under the regulations or if they contravene the regulations;
  - (b) for requiring the fittings, for the purposes of provision made by virtue of paragraph (a) above, to be of such a size, nature, strength or workmanship, to be made of such materials or in such a manner or to conform to such standards as may be prescribed by or approved under the regulations;
  - (c) for imposing such other requirements as may be prescribed with respect to the installation, arrangement, connection, testing, disconnection, alteration and repair of the fittings and with respect to the materials used in their manufacture;
  - (d) for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations; and
  - (e) for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition.
- (3) Without prejudice as aforesaid, regulations under this section may—
- (a) impose separate or concurrent duties with respect to the enforcement of the regulations on water undertakers, local authorities and such other persons as may be prescribed;

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- (b) confer powers on a water undertaker or local authority to carry out works and take other steps, in prescribed circumstances, for remedying any contravention of the regulations;
  - (c) provide for the recovery by a water undertaker or local authority of expenses reasonably incurred by the undertaker or authority in the exercise of any power conferred by virtue of paragraph (b) above;
  - (d) repeal or modify the provisions of section 73 above or section 75 below;
  - (e) provide for a contravention of the regulations to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed;
  - (f) require prescribed charges to be paid to persons carrying out functions under the regulations;
  - (g) enable the Secretary of State to authorise such relaxations of and departures from such of the requirements of the regulations as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition;
  - (h) enable the Secretary of State to authorise a water undertaker or local authority (either instead of the Secretary of State or concurrently with him) to exercise any power conferred on the Secretary of State by regulations made by virtue of paragraph (g) above; and
  - (i) require disputes arising under the regulations to be referred to arbitration and for determinations under the regulations to be subject to such rights of appeal as may be prescribed.
- (4) Without prejudice to sections 84 and 170 below, any person designated in writing for the purposes of this subsection in such manner as may be prescribed may—
- (a) enter any premises for the purpose of—
    - (i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings or with respect to the waste or misuse of water is being or has been contravened;
    - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under this section should be exercised or performed; or
    - (iii) exercising any such power or performing any such duty;
  - or
  - (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under this section.
- (5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsection (4) above.
- (6) The power of the Secretary of State under this section to make regulations with respect to the matters specified in the preceding provisions of this section shall include power, by regulations under this section—
- (a) to modify the operation of Schedule 2 to the <sup>M11</sup>Water Consolidation (Consequential Provisions) Act 1991 in relation to any byelaws made under section 17 of the <sup>M12</sup>Water Act 1945 which have effect by virtue of paragraph 19 of Schedule 26 to the <sup>M13</sup>Water Act 1989 and that Schedule 2; and

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- (b) to revoke or amend any such byelaws;  
 but, so long as any such byelaws so have effect, the references in sections 47(2)(g), 53(2)(c) and 55(4) above to such regulations under this section as are prescribed shall have effect as including references to those byelaws.
- (7) Any sums received by the Secretary of State in consequence of the provisions of any regulations under this section shall be paid into the Consolidated Fund.
- (8) In this section “safe” has the same meaning as in Part II of the <sup>M14</sup>Consumer Protection Act 1987.

#### Textual Amendments

- F223** Words in s. 74(1)(b) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(a)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F224** Words in s. 74(1)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 71(2)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F225** Words in s. 74(1)(c) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(b)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F226** Words in s. 74(1)(c) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 71(3)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F227** Words in s. 74(1)(d) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 23(c)**; S.I. 2004/641, **art. 3(y)**, Sch. 2 (with art. 6, Sch. 3)
- F228** Words in s. 74(1)(d) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 71(2)**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(m) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

#### Marginal Citations

- M11** 1991 c. 60.  
**M12** 1945 c. 42.  
**M13** 1989 c. 15.  
**M14** 1987 c. 43.

## 75 Power to prevent damage and to take steps to prevent contamination, waste etc.

- (1) Without prejudice to any power conferred on water undertakers by regulations under section 74 above, where a water undertaker which provides a supply of water to any premises has reason for believing—
- (a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the undertaker;
  - (b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that main or pipe;
  - (c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the undertaker to those premises is being or is likely to be contaminated before it is used; or
  - (d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

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the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.

[<sup>F229</sup>(1A) Without prejudice to any power conferred on water undertakers by regulations under section 74 above, where a water undertaker whose supply system is used for the purpose of a [<sup>F230</sup>water supply licensee] making a supply of water to any premises has reason for believing—

- (a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the water undertaker;
- (b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that pipe or main;
- (c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the supplier to those premises is being or is likely to be contaminated before it is used; or
- (d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.]

- (2) The power conferred by this subsection in relation to any premises is—
  - (a) where the case constitutes an emergency, power to disconnect the service pipe or otherwise to cut off the supply of water to those premises; and
  - (b) in any other case, power to serve notice on the consumer requiring him to take such steps as may be specified in the notice as necessary to secure that the damage, contamination, waste, misuse or undue consumption ceases or, as the case may be, does not occur.
- (3) Where a water undertaker, in exercise of the power conferred by virtue of subsection (2)(a) above, disconnects a service pipe to any premises or otherwise cuts off any supply of water to any premises, the undertaker shall, as soon as reasonably practicable after the supply is disconnected or cut off, serve a notice on the consumer specifying the steps which that person is required to take before the undertaker will restore the supply.
- (4) The steps specified in a notice under subsection (3) above shall be the steps necessary to secure that, as the case may be—
  - (a) the damage, contamination, waste, misuse or undue consumption; or
  - (b) the likelihood of damage, contamination, waste, misuse or undue consumption,would not recur if the supply were restored.
- (5) A water undertaker which fails, without reasonable excuse, to serve a notice in accordance with subsection (3) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) A notice served for the purposes of subsection (2)(b) above shall—
  - (a) specify the period, not being less than the period of seven days beginning with the day after the service of the notice, within which the steps specified in the notice are to be taken; and

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- (b) set out the powers of the undertaker under subsections (7) to (9) below.
- (7) Where a water undertaker has served a notice for the purposes of subsection (2)(b) above in relation to any premises and—
- (a) the case becomes an emergency; or
  - (b) the premises appear to be unoccupied and the steps specified in the notice are not taken before the end of the period so specified,
- the undertaker may disconnect the service pipe to those premises or otherwise cut off the supply of water to those premises.
- (8) Subsections (3) to (5) above shall apply where a water undertaker exercises its power under subsection (7) above as they apply where such an undertaker exercises its power by virtue of subsection (2)(a) above.
- (9) Where, in a case not falling within subsection (7)(a) or (b) above, any steps specified in a notice served by a water undertaker for the purposes of subsection (2)(b) above have not been taken by the end of the period so specified, the water undertaker shall have power—
- (a) to take those steps itself; and
  - (b) subject to subsection (10) below, to recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served;
- and any steps taken by a water undertaker by virtue of paragraph (a) above shall be necessary works for the purposes of Chapter II of this Part.
- (10) Where any steps are taken by virtue of this section and it is shown that, in the circumstances of the case, those steps were not necessary as mentioned in subsection (2) or, as the case may be, (4) above, the water undertaker in question—
- (a) shall not be entitled to recover any expenses incurred by it in taking those steps; and
  - (b) shall be liable to pay to any other person who took any of those steps an amount equal to any expenses reasonably incurred by that person in taking any of those steps.
- [<sup>F231</sup>(11) Where the power conferred by subsection (2) above on a water undertaker is exercisable by virtue of subsection (1A) above—
- (a) the references to the consumer in subsections (2) and (3), in relation to a supply of water to any premises, shall be taken to be references to the person in respect of whom the supply is made; and
  - (b) the undertaker shall serve on the [<sup>F232</sup>water supply licensee] providing the supply a copy of any notice under this section which is served on the person mentioned in paragraph (a) above.
- (12) In subsection (1A) above, the reference to the supply system of a water undertaker shall be construed in accordance with [<sup>F233</sup>section 17B] above.]

#### Textual Amendments

**F229** S. 75(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 24\(2\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))

**F230** Words in s. 75(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 72\(2\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(m\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

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- F231** S. 75(11)(12) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 24\(3\)](#); S.I. 2005/2714, {art. 3(c)} (with Sch. para. 8)
- F232** Words in s. 75(11)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 72\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F233** Words in s. 75(12) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 72\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(m\)](#) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

**Modifications etc. (not altering text)**

- C20** S. 75(2)-(12) applied (with modifications) (20.4.2010) by [The Water Supply \(Water Quality\) Regulations 2010 \(S.I. 2010/994\)](#), regs. 1(1), [21\(4\)\(5\)](#) (with reg. 1(2)(3))

[<sup>F234</sup>**76** **Temporary bans on use**

- (1) A water undertaker may prohibit one or more specified uses of water supplied by it if it thinks that it is experiencing, or may experience, a serious shortage of water for distribution.
- (2) Only the following uses of water may be prohibited—
  - (a) watering a garden using a hosepipe;
  - (b) cleaning a private motor-vehicle using a hosepipe;
  - (c) watering plants on domestic or other non-commercial premises using a hosepipe;
  - (d) cleaning a private leisure boat using a hosepipe;
  - (e) filling or maintaining a domestic swimming or paddling pool;
  - (f) drawing water, using a hosepipe, for domestic recreational use;
  - (g) filling or maintaining a domestic pond using a hosepipe;
  - (h) filling or maintaining an ornamental fountain;
  - (i) cleaning walls, or windows, of domestic premises using a hosepipe;
  - (j) cleaning paths or patios using a hosepipe;
  - (k) cleaning other artificial outdoor surfaces using a hosepipe.
- (3) The Minister may by order—
  - (a) add a non-domestic purpose to the list in subsection (2);
  - (b) remove a purpose from the list in subsection (2).
- (4) A prohibition must specify—
  - (a) the date from which it applies, and
  - (b) the area to which it applies (which may be all or part of the undertaker's area).
- (5) A person who contravenes a prohibition—
  - (a) is guilty of an offence, and
  - (b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) A water undertaker which issues a prohibition must make arrangements for a reasonable reduction of charges which are made in respect of prohibited uses (including arrangements for repayment or credit where charges are paid in advance).
- (7) A water undertaker may vary or revoke a prohibition.]

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### Textual Amendments

**F234** Ss. 76-76C substituted for s. 76 (1.9.2010 for specified purposes, 1.10.2010 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 36, 49(3)** (with s. 49(1)(6)); S.I. 2010/2169, arts. 3(3), 4, Sch. (with art. 5)

### [<sup>F234</sup>76A Temporary bans: supplemental

- (1) A prohibition may—
  - (a) apply to one or more specified uses of water generally or only in specified cases or circumstances (which may be specified by reference to classes of user, timing or in any other way);
  - (b) be subject to exceptions (which may be absolute or conditional, and may be specified by reference to classes of user, timing or in any other way).
- (2) The Minister may by order—
  - (a) provide for exceptions to a category of use in section 76(2) (whether or not added under section 76(3));
  - (b) provide that a specified activity, or an activity undertaken in specified circumstances, is to be or not to be treated as falling within a category of use in section 76(2) (whether or not added under section 76(3));
  - (c) define a word or phrase used in section 76(2) (whether or not added under section 76(3)).
- (3) In particular, an order may—
  - (a) restrict a category of use by reference to how water is drawn;
  - (b) frame an exception by reference to ownership of land by a specified person or class of person;
  - (c) provide for a process that involves the use of a hosepipe at any point to be included in the meaning of “using a hosepipe”;
  - (d) provide for a reference to a thing to include a reference to something that is or may be used in connection with it (such as, for example, for a reference to a vehicle to include a reference to a trailer).
- (4) In this section and section 76 “the Minister” means—
  - (a) the Secretary of State in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in Wales.
- (5) Subject to provision under subsection (2), a reference to a hosepipe in section 76 includes a reference to anything designed, adapted or used to serve the same purpose as a hosepipe.]

### Textual Amendments

**F234** Ss. 76-76C substituted for s. 76 (1.9.2010 for specified purposes, 1.10.2010 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 36, 49(3)** (with s. 49(1)(6)); S.I. 2010/2169, arts. 3(3), 4, Sch. (with art. 5)



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## [<sup>F234</sup>76B Temporary bans: procedure

- (1) A prohibition takes effect only if this section is complied with.
- (2) Before the period for which a prohibition is to apply the water undertaker must give notice of the prohibition and its terms—
  - (a) in at least two newspapers circulating in the area to which it is to apply, and
  - (b) on the water undertaker's internet website.
- (3) The notice must give details of how to make representations about the proposed prohibition.
- (4) The variation of a prohibition is to be treated as a prohibition for the purposes of this section.
- (5) A water undertaker must give notice of a revocation of a prohibition—
  - (a) in at least two newspapers circulating in the area to which it is to apply, and
  - (b) on the water undertaker's internet website.
- (6) The revocation may not take effect until at least one notice under subsection (5) has been given.]

### Textual Amendments

**F234** Ss. 76-76C substituted for s. 76 (1.9.2010 for specified purposes, 1.10.2010 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 36, 49(3)** (with s. 49(1)(6)); [S.I. 2010/2169](#), arts. 3(3), 4, Sch. (with art. 5)

## [<sup>F234</sup>76C Orders under sections 76 and 76A

- (1) Section 213 applies to orders under section 76(3) or 76A(2) as it applies to regulations.
- (2) But—
  - (a) an order made by the Secretary of State under section 76(3) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament,
  - (b) an order made by the Welsh Ministers under section 76(3) may not be made unless a draft has been laid before and approved by resolution of the National Assembly for Wales, and
  - (c) an order made by the Welsh Ministers under section 76A(2) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.]

### Textual Amendments

**F234** Ss. 76-76C substituted for s. 76 (1.9.2010 for specified purposes, 1.10.2010 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 36, 49(3)** (with s. 49(1)(6)); [S.I. 2010/2169](#), arts. 3(3), 4, Sch. (with art. 5)

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### *Local authority functions*

#### **77 General functions of local authorities in relation to water quality.**

- (1) It shall be the duty of every local authority to take all such steps as they consider appropriate for keeping themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises.
- (2) It shall be the duty of a local authority to comply with any direction given by the Secretary of State to that authority, to authorities of a description applicable to that authority or to local authorities generally as to—
  - (a) the cases and circumstances in which they are or are not to exercise any of the powers conferred on them by this Chapter in relation to private supplies; and
  - (b) the manner in which those powers are to be exercised.
- (3) The Secretary of State may by regulations make such provision, supplementing the provisions of this section and of sections 78 and 79(2) below, as he considers appropriate for—
  - (a) imposing duties and conferring powers on local authorities with respect to the acquisition of information about the quality and sufficiency of water supplies provided to premises in their areas; and
  - (b) regulating the performance of any duty imposed by or under any of those provisions.
- (4) Without prejudice to the generality of subsection (3) above, regulations under that subsection may—
  - (a) prescribe the matters to be taken into account by a local authority in determining, for the purposes of subsection (1) above, what is appropriate;
  - (b) provide, for the purposes of the exercise or performance of any power or duty conferred or imposed on a local authority by or under any of the provisions mentioned in subsection (3) above, for such samples of water to be taken and analysed at such times and in such manner as may be prescribed;
  - (c) authorise local authorities to exercise or perform any such power or duty through prescribed persons;
  - (d) provide for the recovery by a local authority from prescribed persons of such amounts as may be prescribed in respect of expenses reasonably incurred by the authority in the exercise of any such power or the performance of any such duty.

#### **Subordinate Legislation Made**

**P2** S. 77(3)(4): ss. 67 and 77(3) (with ss. 77(4) and 213(2)) power exercised by [S.I.1991/2790](#)

#### **Modifications etc. (not altering text)**

**C21** Ss. 77-79 modified (6.4.2010) by [The Cowes Port Health Authority Order 2010 \(S.I. 2010/1216\)](#), arts. 1(1), 4, [Sch.](#)

**C22** Ss. 77-79 modified (6.4.2010) by [The Portsmouth Port Health Authority Order 2010 \(S.I. 2010/1217\)](#), arts. 1(1), 4, [Sch.](#)

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## 78 Local authority functions in relation to undertakers' supplies.

- (1) It shall be the duty of a local authority to notify any water undertaker of anything appearing to the authority to suggest—
- (a) that any supply by that undertaker [<sup>F235</sup>, or by a [<sup>F236</sup>water supply licensee] using that undertaker's supply system,] of water for domestic or food production purposes to any premises in the area of that authority is, has been or is likely to become unwholesome or (so far as any such premises are concerned) insufficient for domestic purposes;
  - (b) that the unwholesomeness or insufficiency of any such supply is, was or is likely to be such as to cause a danger to life or health; or
  - (c) that the duty imposed on that undertaker by virtue of section 68(1)(b) above is being, has been or is likely to be so contravened as to affect any supply of water to premises in that area.
- (2) Where a local authority have notified a water undertaker of any such matter as is mentioned in subsection (1) above, it shall be the duty of that authority, if they are not satisfied that all such remedial action as is appropriate will be taken by the undertaker, to inform the Secretary of State about the contents of the notification.
- [<sup>F237</sup>(3) In subsection (1)(a) above, the reference to the water undertaker's supply system shall be construed in accordance with section 17B(5) above.]

### Textual Amendments

- F235** Words in s. 78(1)(a) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 26\(2\)](#); S.I. 2005/2714, {art. 3(c)} (with Sch. para. 8)
- F236** Words in s. 78(1)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 74\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(n\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F237** S. 78(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 26\(3\)](#); S.I. 2005/2714, {art. 3(c)} (with Sch. para. 8)

### Modifications etc. (not altering text)

- C21** Ss. 77-79 modified (6.4.2010) by [The Cowes Port Health Authority Order 2010 \(S.I. 2010/1216\)](#), arts. 1(1), 4, [Sch.](#)
- C22** Ss. 77-79 modified (6.4.2010) by [The Portsmouth Port Health Authority Order 2010 \(S.I. 2010/1217\)](#), arts. 1(1), 4, [Sch.](#)

## 79 Local authority functions where piped supplies insufficient or unwholesome.

- (1) This section applies to a case in which it is not practicable at reasonable cost for a water undertaker, by supplying water in pipes, to provide or maintain such a supply of wholesome water to any particular premises in its area as (so far as those premises are concerned) is sufficient for domestic purposes.
- (2) In any case to which this section applies, it shall be the duty of the local authority in whose area the premises in question are situated, if they are satisfied—
- (a) that the insufficiency or unwholesomeness of the supply of water for domestic purposes to those premises is such as to cause a danger to life or health; and
  - (b) that it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as is sufficient for those purposes,

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to require the undertaker, under subsection (3) below, to provide a supply of water to those premises otherwise than in pipes.

- (3) Where, in a case to which this section applies—
- (a) the insufficiency or unwholesomeness of the supply of water for domestic purposes to the premises in question is such as to cause a danger to life or health;
  - (b) it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as (so far as those premises are concerned) is sufficient for domestic purposes; and
  - (c) the local authority in whose area those premises are situated notify the undertaker of the danger to life or health and require the undertaker to provide a supply otherwise than in pipes,

it shall be the duty of the undertaker, for such period as may be required by that local authority, to provide any supply to those premises which it is practicable at reasonable cost to provide otherwise than in pipes and which it is required to provide by that authority.

- (4) Where under this section a local authority require the provision by a water undertaker of a supply of water to any premises, that authority—
- (a) shall be liable to the undertaker for any charges payable by virtue of Chapter I of Part V of this Act in respect of the provision of that supply; but
  - (b) shall have power to recover the whole or any part of any charges paid by virtue of this subsection from the owner or occupier of the premises to which the supply is provided.
- (5) In this section references to the provision of a supply of water to any premises otherwise than in pipes shall have effect, in a case in which it is practicable at reasonable cost to provide a supply (whether or not in pipes) to a place within a reasonable distance of those premises, as including references to the provision of a supply to that place.
- (6) The duty of a water undertaker under subsection (3) above shall be enforceable under section 18 above by the [<sup>F238</sup>Director].

#### **Textual Amendments**

**F238** Word in s. 79(6) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para.23](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I

#### **Modifications etc. (not altering text)**

**C21** Ss. 77-79 modified (6.4.2010) by [The Cowes Port Health Authority Order 2010 \(S.I. 2010/1216\)](#), arts. 1(1), 4, [Sch.](#)

**C22** Ss. 77-79 modified (6.4.2010) by [The Portsmouth Port Health Authority Order 2010 \(S.I. 2010/1217\)](#), arts. 1(1), 4, [Sch.](#)

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## **80 Remedial powers of local authorities in relation to private supplies.**

- (1) Subject to the following provisions of this section, where a local authority are satisfied in relation to any premises in their area which are supplied with water for domestic or food production purposes by means of a private supply—
  - (a) that any water which is being, has been or is likely to be supplied for those purposes to those premises by means of that private supply is not, was not or, as the case may be, is likely not to be wholesome; or
  - (b) that that private supply is failing, has failed or is likely to fail to provide to any house on those premises such a supply of wholesome water as (so far as that house is concerned) is sufficient for domestic purposes,the authority may serve a notice in relation to that private supply on one or more of the relevant persons.
- (2) A notice under this section in relation to a private supply of water to any premises shall-
  - (a) give particulars of the matters mentioned in subsection (1) above in respect of which the notice is served;
  - (b) specify the steps which, in the opinion of the authority serving the notice, are required to be taken for ensuring that there is a supply of water to those premises which is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
  - (c) specify a period, ending not less than twenty-eight days after the day on which the notice is served, within which any representations or objections with respect to the notice must be received by that authority; and
  - (d) state the effect in relation to that notice of section 81(2) and (3) below.
- (3) Subject to sections 81 and 82 below, where a local authority serve a notice under this section on any relevant person they may do one or more of the following, that is to say—
  - (a) by that notice designate as steps to be taken by the authority themselves such of the steps specified in the notice as they consider it appropriate so to designate;
  - (b) by that notice require that person, within such reasonable period as may be specified in the notice, to take one or more of the steps so specified;
  - (c) by that notice require that person, at such times as may be determined in accordance with provision contained in the notice, to make to another relevant person or to that authority such payments as may be so determined in respect of expenses reasonably incurred by that other person or that authority in taking any step specified in the notice;
  - (d) by that notice undertake from time to time to make such payments to that person as may be so determined in respect of expenses reasonably incurred by that person in taking any step specified in the notice.
- (4) The power of a local authority to serve a notice under this section specifying the steps which are required to be taken in relation to any source from which a private supply is provided both to premises in the area of that authority and to premises in the area of another local authority shall be exercisable only where—
  - (a) the other authority consent to the service of the notice; or
  - (b) the authorities act jointly in exercising their respective powers under this section in relation to that source.

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- (5) The powers conferred by this section and sections 81 and 82 below shall be so exercised in relation to a private supply of water to any premises where there is no house as to secure that no local authority are required to bear any of the expenses incurred (whether by the authority or by any other person) in taking any of the steps for ensuring that the supply is wholesome which are specified in a notice under this section.
- (6) The steps that a relevant person may be required by a notice under this section to take in relation to any premises shall include—
- (a) requiring a supply of water to be provided to those premises by a water undertaker or by any other person; and
  - (b) taking such steps for the purpose of securing that such a requirement is complied with, and of enabling such a supply to be so provided, as may be specified in the notice.
- (7) For the purposes of this section and sections 81 to 83 below the relevant persons, in relation to a private supply of water to any premises in the area of a local authority, are—
- (a) the owners and occupiers of those premises; and
  - (b) whether or not the source of the private supply is in that authority's area, the owners and occupiers of the premises where that source is situated and any other person who exercises powers of management or control in relation to that source;
- and in sections 81 to 83 below a notice under this section is referred to as a private supply notice.

## **81 Confirmation of private supply notices.**

- (1) Subject to subsection (2) below, a private supply notice served by a local authority shall not take effect until the end of the period specified in the notice as the period within which representations or objections with respect to the notice must be received by that authority.
- (2) Where any written representation or objection with respect to a private supply notice served by a local authority is received by the authority, before the end of the period specified in the notice, from a person on whom the notice was served, that notice shall not take effect unless—
  - (a) the notice is submitted by the authority to the Secretary of State and is confirmed by him either with or without modifications; or
  - (b) the representation or objection is withdrawn.
- (3) If a local authority submit a private supply notice to the Secretary of State for confirmation, the Secretary of State—
  - (a) shall consider whether the notice should be confirmed and whether, if it is confirmed, it should be confirmed with or without modifications;
  - (b) may, with respect to the matters specified in the notice or any proposed modification of it, direct the local authority to serve a private supply notice, in such terms as may be specified in the direction, on any relevant person who has not previously been served with such a notice;
  - (c) may, for the purposes of paragraph (a) or (b) above cause a local inquiry to be held or afford—

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- (i) to the local authority; and
    - (ii) to every person who has made representations or objections with respect to the notice or any proposed direction under paragraph (b) above,  
an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose; and
  - (d) if he is satisfied that the person on whom any notice to be served in pursuance of a direction under paragraph (b) above has had a proper opportunity of having his representations or objections with respect to the proposal for the direction considered, may dispense, in relation to the notice so served, with the provisions of subsections (1) and (2) above and of section 80(2)(c) and (d) above.
- (4) Where the Secretary of State confirms a private supply notice (whether with or without modifications)—
- (a) he, or if he so directs, the local authority concerned shall serve notice of that confirmation on every person originally served with the notice under section 80 above; and
  - (b) that notice shall take effect, with any modifications made by the Secretary of State, at such time as may be specified in the notice served under this subsection.

## **82 Enforcement and variation of private supply notice.**

- (1) Where any relevant person who is required by virtue of a private supply notice to take any step in relation to any premises fails to take that step within the period specified in the notice, the authority which served the notice may, in accordance with any applicable provision having effect by virtue of section 83 or 84 below, take that step themselves.
- (2) Where any step is taken by a local authority in relation to any premises by virtue of subsection (1) above—
  - (a) the authority may recover from the person who failed to take that step within the specified period any expenses reasonably incurred by the authority in taking that step; and
  - (b) for the purposes of any requirement under which payments are required to be made to that person by any person other than the authority, sums paid by virtue of paragraph (a) above in respect of the taking of any step shall be deemed to be expenses incurred in the taking of that step by the person who failed to take it.
- (3) Nothing in this Act shall confer any right of action on any person in respect of any loss or damage sustained by that person in consequence of the failure by any other person to take any step specified in a private supply notice.
- (4) Any sum required to be paid to any person by virtue of any requirement or undertaking contained in a private supply notice shall be recoverable by that person from the person who is required to pay it.
- (5) Any requirement which—
  - (a) is imposed by virtue of a private supply notice on the owner or occupier of any premises; and

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- (b) is expressed to bind those premises in relation to the owners or occupiers from time to time,  
 shall bind successive owners or, as the case may be, occupiers of those premises and shall be a local land charge.
- (6) Subject to subsection (7) below, a local authority may by notice served on any person modify or revoke the effect in relation to that person of any private supply notice or notice under this subsection (including a notice which has been confirmed, with or without modifications, by the Secretary of State).
- (7) Sections 80(2)(c) and (d) and 81 above shall apply, as they apply in relation to a private supply notice, in relation to any notice served by a local authority on any person under subsection (6) above except where the notice—
- (a) extends the period within which any step is required to be taken by that person; or
  - (b) discharges, postpones or abates any obligation of that person to make a payment to the local authority.

### **83 Application of certain powers to local authorities in relation to private supplies.**

- (1) For the purposes of the taking of any steps falling to be taken by a local authority by virtue of a designation under subsection (3)(a) of section 80 above the provisions of Part VI of this Act shall have effect—
- (a) as if the relevant works powers, so far as conferred on a water undertaker for the purpose of carrying out its functions, were also conferred on a local authority for the purpose of ensuring that a supply of water provided by means of a private supply to any premises in the authority's area is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;
  - (b) as if any such power, so far as it is conferred on a water undertaker in relation to things belonging to or operated or used by the undertaker for the purposes of its functions, were conferred by virtue of paragraph (a) above on a local authority in relation to things belonging to or operated or used by that authority, or a relevant person, in connection with the provision of water by means of a private supply;
  - (c) as if references to a water undertaker in any provision of Part VI of this Act relating to a relevant works power, except the references in sections 181 and 182 below, included references to a local authority; and
  - (d) as if the making by any person in pursuance of a private supply notice of any payment in respect of sums incurred in the laying of any pipe entitled that person, for the purposes of section 179(1) below, to an interest in the pipe.
- (2) Where by virtue of this Act a local authority have power under Part VII of the <sup>M15</sup>Local Government Act 1972 (miscellaneous powers of a local authority) to acquire (whether compulsorily or otherwise) any land or right over land for the purpose of ensuring that private supplies of water to premises in their area are both wholesome and (so far as houses on those premises are concerned) sufficient for domestic purposes, that power shall include power to acquire land or any interest or right in or over land in order, for that purpose, to dispose of the land or the interest or right to a person who is a relevant person in relation to such a private supply.
- (3) In this section “relevant works powers” means the powers conferred on water undertakers by sections 158, 159, 161, 163 and 165 below.



*Status: Point in time view as at 01/04/2016.*

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#### Marginal Citations

M15 1972 c. 70.

### 84 Local authority rights of entry etc.

- (1) Any person designated for the purpose by a local authority within whose area any waterworks are situated shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is or has been any contravention of section 72 above in relation to those waterworks.
- (2) Any person designated in writing for the purpose by a local authority may—
  - (a) enter any premises for the purpose of—
    - (i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings, or with respect to the waste or misuse of water, is being or has been contravened;
    - (ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under section 74 above should be exercised or performed; or
    - (iii) exercising any such power or performing any such duty;or
  - (b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that section.
- (3) Any person designated in writing for the purpose by any local authority may—
  - (a) enter any premises for the purpose, in relation to any private supply, of—
    - (i) determining whether, and if so in what manner, any power or duty conferred or imposed on that authority by or under any of sections 77 to 82 above should be exercised or performed; or
    - (ii) exercising any such power or performing any such duty;
  - (b) enter any premises to which a supply of water is provided by a water undertaker for the purpose, in relation to a supply so provided of—
    - (i) determining whether, and if so in what manner, any such power should be exercised or any such duty performed; or
    - (ii) exercising any such power or performing any such duty;or
  - (c) carry out such inspections, measurements and tests on premises entered by that person or of articles found on any such premises, and take away such samples of water or of any land or articles, as the local authority—
    - (i) consider appropriate for the purposes of any such power or duty; and
    - (ii) have authorised that person to carry out or take away.
- (4) Part I of Schedule 6 to this Act shall apply to the right of entry conferred by subsection (1) above; but nothing in that subsection or in that Part of that Schedule shall entitle any person designated for the purposes of that subsection by a local authority to have access to any waterworks belonging to a water undertaker.

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- (5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsections (2) and (3) above.
- (6) In subsection (1) above the reference to a local authority includes a reference to a county council and to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and any expenses incurred by the Common Council of the City of London in the exercise of their functions under that subsection shall be defrayed as part of their general expenses.
- (7) In this section “waterworks” has the same meaning as in section 72 above.

## **85 Local authority power to obtain information for the purposes of functions under Chapter III.**

- (1) Subject to subsection (2) below, a local authority may serve on any person a notice requiring him to furnish that authority, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by that authority for the purpose of exercising or performing any power or duty conferred or imposed on that authority by or under any of sections 77 to 82 above.
- (2) The Secretary of State may by regulations make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.
- (3) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under subsection (1) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### *Assessors for the enforcement of water quality*

## **86 Assessors for the enforcement of water quality.**

- (1) The Secretary of State may for the purposes of this section appoint persons to act on his behalf <sup>F239</sup> . . . in relation to some or all of—
  - (a) the powers and duties conferred or imposed on him by or under sections 67 to 70 and 77 to 82 above; and
  - (b) such other powers and duties in relation to the quality and sufficiency of water supplied [<sup>F240</sup>using a water undertaker’s supply system] as are conferred or imposed on him by or under any other enactments.
- <sup>F241</sup>(1A) Subject to subsection (1B) below, the Secretary of State shall designate one such person as the Chief Inspector of Drinking Water.
- (1B) If the function of the Secretary of State under subsection (1) above is transferred to any extent to the Assembly—
  - (a) subject to paragraph (b) below, the Assembly may designate one such person appointed by it as the Chief Inspector of Drinking Water for Wales; but
  - (b) if the person designated by the Assembly is the same as the person designated by the Secretary of State as the Chief Inspector of Drinking Water, he shall be known as such in both capacities.]
- (2) [<sup>F242</sup>An inspector] appointed under this section shall—

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- (a) carry out such investigations as the Secretary of State may require him to carry out for the purpose of—
    - (i) ascertaining whether any duty or other requirement imposed on that undertaker [F243] or a [F244] water supply licensee] by or under any of sections 68, 69 and 79 above or imposed on a relevant person (as defined in subsection (1A) of section 70 above) by or under that section] is being, has been or is likely to be contravened; or
    - (ii) advising the Secretary of State as to whether, and if so in what manner, any of the powers of the Secretary of State in relation to such a contravention, or any of the powers (including the powers to make regulations) which are conferred on him by or under any of sections 67 to 70 and 77 to 82 above should be exercised;
  - and
  - (b) make such reports to the Secretary of State with respect to any such investigation as the Secretary of State may require.
- (3) Without prejudice to the powers conferred by subsection (4) below, it shall be the duty of a water undertaker [F245], [F246] water supply licensee] or other relevant person (as defined in section 70(1A) above)—
- (a) to give [F247] an inspector] appointed under this section all such assistance; and
  - (b) to provide [F247] an inspector] so appointed with all such information,
- as that person may reasonably require for the purpose of carrying out any such investigation as is mentioned in subsection (2) above.
- (4) Any [F248] inspector] appointed under this section who is designated in writing for the purpose by the Secretary of State may—
- (a) enter any premises for the purpose of carrying out any such investigation as is mentioned in subsection (2) above;
  - (b) carry out such inspections, measurements and tests on premises entered by that [F248] inspector] or of articles or records found on any such premises, and take away such samples of water or of any land or articles, as that [F248] inspector] considers appropriate for the purpose of enabling him to carry out any such investigation; or
- [F249] (c) at any reasonable time require—
- (i) any water undertaker or [F250] water supply licensee] to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that undertaker [F251] or licensee] by or under any of sections 68, 69 and 79 above; or
  - (ii) any relevant person (as defined in subsection (1A) of section 70 above) to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that person by or under that section.]
- (5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsection (4) above.
- (6) Any water undertaker [F252], [F253] water supply licensee] or other relevant person] which fails to comply with the duty imposed on [F254] that person] by virtue of subsection (3) above shall be guilty of an offence and liable [F255] on summary conviction, or on conviction on indictment, to a fine].

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- [<sup>F256</sup>(7) Proceedings by the Secretary of State for an offence under this section or in relation to the quality and sufficiency of water supplied using a water undertaker’s supply system may be instituted and carried on in the name of the Chief Inspector of Drinking Water.
- (8) Any such proceedings by the Assembly may be instituted and carried on in the name of the Chief Inspector of Drinking Water for Wales, if there is one (or, if subsection (1B) (b) above applies, in the name of the Chief Inspector of Drinking Water).
- (9) In this section “inspector” means the Chief Inspector of Drinking Water or any other person appointed under subsection (1) above.]

### Textual Amendments

- F239** Words in s. 86(1) repealed (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 57(2), 101(2), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(z)(i)** (with [art. 6, Sch. 3](#))
- F240** Words in s. 86(1)(b) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 26(2)**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F241** S. 86(1A)(1B) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 57(3), 105(3); S.I. 2004/641, **art. 3(m)** (with [art. 6, Sch. 3](#))
- F242** Words in s. 86(2) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 57(4), 105(3); S.I. 2004/641, **art. 3(m)** (with [art. 6, Sch. 3](#))
- F243** Words in s. 86(2)(a)(i) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 26(3)**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F244** Words in s. 86(2)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 75(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(o)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F245** Words in s. 86(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 26(4)**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F246** Words in s. 86(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 75(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(o)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F247** Words in s. 86(3)(a)(b) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 57(5), 105(3); S.I. 2004/641, **art. 3(m)** (with [art. 6, Sch. 3](#))
- F248** Word in s. 86(4) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 57(6), 105(3); S.I. 2004/641, **art. 3(m)** (with [art. 6, Sch. 3](#))
- F249** S. 86(4)(c) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 26(5)**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F250** Words in s. 86(4)(c)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 75(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(o)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F251** Words in s. 86(4)(c)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 75(3)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(o)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F252** Words in s. 86(6) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 26(6)**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F253** Words in s. 86(6) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 75(2)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(o)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F254** Words in s. 86(6) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 75(4)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(o)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F255** Words in s. 86(6) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 23(4)** (with [reg. 5\(1\)](#))

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**F256** S. 86(7)-(9) added (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 57(8)**, 105(3); S.I. 2004/641, **art. 3(m)**  
(with [art. 6](#), [Sch. 3](#))

## [<sup>F257</sup> **86ZA** Charging of fees

- (1) The Secretary of State may by order made by statutory instrument confer power on the Chief Inspector of Drinking Water to charge fees for the exercise of a function by an inspector appointed by the Secretary of State under section 86 (and to determine their amount).
- (2) The Welsh Ministers may by order made by statutory instrument confer power on the designated person to charge fees for the exercise of a function by an inspector appointed by the Welsh Ministers under section 86 (and to determine their amount).
- (3) In subsection (2) “the designated person” means—
  - (a) the Chief Inspector of Drinking Water for Wales, or
  - (b) if the same person is designated under section 86(1A) and (1B), the Chief Inspector of Drinking Water in that person's capacity as a person designated by the Welsh Ministers under section 86(1B).
- (4) An order under this section may include consequential, supplementary, incidental or transitional provision, or savings.
- (5) A statutory instrument containing an order made by the Secretary of State under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing an order made by the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of the Assembly.
- (7) Subsection (8) applies in relation to a statutory instrument containing both—
  - (a) an order under this section made by the Secretary of State, and
  - (b) an order under this section made by the Welsh Ministers.
- (8) If in accordance with subsection (5) or (6)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
  - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.]

### Textual Amendments

**F257** S. 86ZA inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 40(1)**, 94(3); S.I. 2014/1823, **art. 2(a)**

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## [<sup>F258</sup>Complaints

### Textual Amendments

**F258** S. 86A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 29](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

### **86A** <sup>F259</sup> Procedure for dealing with complaints.

- (1) Each water undertaker shall establish a procedure for dealing with complaints made by its customers or potential customers in connection with the supply of water.
- (2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
  - (a) the water undertaker has consulted the [<sup>F260</sup>regional committee] to which it has been allocated; and
  - (b) the proposed procedure or modification has been approved by the Director.
- (3) The water undertaker shall—
  - (a) publicise the procedure in such manner as may be approved by the Director; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Director may give a direction to a water undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.
- (5) A direction under subsection (4) above—
  - (a) may specify the manner in which the review is to be conducted; and
  - (b) shall require a written report of the review to be made to the Director.
- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the water undertaker, direct the undertaker to make such modifications of—
  - (a) the procedure; or
  - (b) the manner in which the procedure operates,
 as may be specified in the direction.
- (7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.
- (8) The duty of a water undertaker to comply with subsection (1) above and with any direction given to it under subsection (4) or (6) above shall be enforceable by the Director under section 18 above.
- (9) Where the Director is considering whether to exercise his powers under subsection (4) or (6) above in relation to a water undertaker, it shall be the duty of that undertaker to give him such information as he may reasonably require for the purpose of assisting him in coming to a decision.
- (10) Section 202 below shall have effect, with the necessary modifications, in relation to information which the Director requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.]

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#### Textual Amendments

- F259** S. 86A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 29](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F260** Words in s. 86A(2)(a) substituted (1.10.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 27\(3\)](#); S.I. 2005/2714, [art. 2\(l\)\(v\)\(aa\)](#) (with Sch. para. 8)

## CHAPTER IV

### FLUORIDATION

#### Modifications etc. (not altering text)

- C23** Pt. 3 Ch. 4 modified (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 37\(1\), 306\(2\)\(3\)](#); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-9)

#### [<sup>F261</sup>87 Fluoridation of water supplies

- (1) If requested in writing to do so by a relevant authority, a water undertaker shall enter into arrangements with the relevant authority to increase the fluoride content of the water supplied by that undertaker to premises within the area specified in the arrangements.
- (2) But a water undertaker shall not be required by subsection (1) above to enter into any such arrangements until an indemnity with respect to the arrangements has been given by virtue of section 90 below—
  - (a) to the water undertaker; and
  - (b) to any [<sup>F262</sup>water supply licensee] which is entitled to one.
- (3) In this section and the following provisions of this Chapter—
  - (a) references to a relevant authority—
    - [<sup>F263</sup>(i) in relation to areas in England, are to the Secretary of State;]
    - (ii) in relation to areas in Wales, are to the Assembly; and
  - (b) references to water supplied by a water undertaker are to water supplied (whether by a water undertaker or a [<sup>F265</sup>water supply licensee]) to premises using the supply system of that undertaker.
- [<sup>F266</sup>(3A) The Secretary of State may make a request under subsection (1) only if the Secretary of State is required to do so by section 88G(2) (following the making of a fluoridation proposal in accordance with section 88B).]
- (4) The area specified in arrangements under this section may be—
  - [<sup>F267</sup>(a) in relation to England, such area as the Secretary of State considers appropriate for the purpose of complying with section 88G(2);]
  - (b) in relation to Wales, such area comprising the whole or any part of Wales as the Assembly may determine.
- (5) The arrangements shall be on such terms as may be agreed between the relevant authority and the water undertaker or, in the absence of agreement, determined in accordance with section 87B below.

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- (6) Those terms shall include provision—
- (a) requiring the relevant authority to meet the reasonable capital and operating costs incurred by the water undertaker in giving effect to the arrangements;
  - (b) specifying circumstances in which the requirement to increase the fluoride content may be temporarily suspended; and
  - (c) for the variation of the arrangements at the request of the relevant authority.
- (7) The relevant authority shall consult the Authority in relation to the terms to be included in any arrangements under this section (in particular, terms which affect the operation of the water undertaker’s supply system).
- <sup>F268</sup>(7A) The Secretary of State must, in relation to the terms to be included in any arrangements under this section, consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.
- (7B) In this section and the following provisions of this Chapter “local authority” means—
- (a) a county council in England;
  - (b) a district council in England, other than a council for a district in a county for which there is a county council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London.]
- (8) <sup>F269</sup>If two or more relevant authorities request a particular water undertaker to enter into arrangements in respect of adjoining areas—
- (a) the authorities shall co-operate with each other so as to secure that the arrangements (taken together) are operable and efficient; and
  - (b) if suitable terms are not agreed for all the arrangements, a combined reference may be made by the relevant authorities under section 87B below to enable the terms of each set of arrangements to be determined so that they are consistent.]
- (9) <sup>F269</sup>If a relevant authority requests a water undertaker to vary arrangements, the authority shall co-operate with any relevant authority for an adjoining area which has entered into arrangements with the same water undertaker so as to secure that following the variation the arrangements (taken together) will be operable and efficient.]
- (10) <sup>F269</sup>If suitable terms are not agreed for a variation mentioned in subsection (9), a combined reference may be made by the relevant authorities under section 87B below to enable the terms of the variation to be determined so that (following the variation) both sets of arrangements are consistent.]
- (11) Before carrying out the consultation required by subsection (1) of section 89 below in relation to a step mentioned in paragraph (a), (b) or (c) of subsection (2) of that section, <sup>F270</sup>a relevant authority]<sup>F270</sup>the Welsh Ministers] shall consult the water undertaker in question as to whether the arrangements which would result from taking that step would be operable and efficient (or, where it is proposed to terminate the arrangements, as to whether it would be reasonably practicable to do so).]

#### Textual Amendments

**F261** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), ss. **58(2)(11)-(14)**, 105(3); S.I. 2008/1922, [art. 2\(a\)](#); S.I. 2009/359, [art. 2](#), (with saving in art. 3, Sch. 3)



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- F262** Words in s. 87(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 76](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F263** S. 87(3)(a)(i) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(2\)](#), [306\(2\)\(3\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)
- F264** Words in s. 87(3)(a)(i) substituted (1.3.2007) by virtue of [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), [ss. 2, 8\(2\)](#), [Sch. 1 para. 138](#)
- F265** Words in s. 87(3)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 76](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F266** S. 87(3A) inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(3\)](#), [306\(2\)\(3\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)
- F267** S. 87(4)(a) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(4\)](#), [306\(2\)\(3\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)
- F268** S. 87(7A)(7B) inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(5\)](#), [306\(2\)\(3\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)
- F269** S. 87(8)-(10) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(7\)](#), [306\(2\)\(3\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)
- F270** Words in s. 87(11) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(8\)](#), [306\(2\)\(3\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

**Modifications etc. (not altering text)**

- C24** S. 87: functions not to be exercised by a primary care trust (1.4.2000) by virtue of [S.I. 2000/695](#), art. 4(1), [Sch. 4](#)

**[<sup>F271</sup>87A Target concentration of fluoride**

- (1) Arrangements under section 87(1) above shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.
- (2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if the relevant authority considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).
- (3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.

[ If the Secretary of State proposes to—

- <sup>F272</sup>(3A) (a) make arrangements which provide for the concentration in the specified area (or any part of it) to be lower than the general target concentration, or
- (b) vary existing arrangements so that they so provide,
- the Secretary of State shall consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.]

- (4) If, in relation to any area (“area A”), an order under section 88A(1) below specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this subsection, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of subsections (2) and (3) above).

*Status: Point in time view as at 01/04/2016.*

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- (5) If the result of the operation of subsection (4) above in relation to arrangements in area A is that in an area adjoining area A (“area B”) it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and subsection (4) above shall apply accordingly.
- (6) An order under section 88A(1) below which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of subsection (4) or (5) above) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).
- (7) In this section, “specified area” means the area specified in arrangements under section 87(1) above.]

#### Textual Amendments

- F271** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)
- F272** S. 87A(3A) inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(9)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

#### [<sup>F273</sup>87B Fluoridation arrangements: determination of terms

- (1) This section applies if a relevant authority and a water undertaker fail to agree—
- (a) the terms of arrangements requested by the relevant authority pursuant to subsection (1) of section 87 above; or
  - (b) a variation in the terms of those arrangements following a request by the relevant authority pursuant to subsection (6)(c) of that section.
- (2) In relation to areas in England (except where subsection (4) below applies)—
- [<sup>F274</sup>(a) the Secretary of State may—
    - (i) determine the terms of the arrangements as the Secretary of State sees fit; or
    - (ii) refer the matter for determination by such other person as the Secretary of State considers appropriate; and]
    - (b) [<sup>F275</sup>following such a reference, the Secretary of State may—
      - (i) determine the terms of the arrangements as he sees fit; or
      - (ii) refer the matter for determination by such other person as he considers appropriate; and]
    - (c) the determination of the Secretary of State or, as the case may be, the other person shall be final.

(3) In relation to areas in Wales (except where subsection (4) below applies)—

    - (a) the Assembly may—
      - (i) determine the terms of the arrangements itself as it sees fit; or
      - (ii) refer the matter for determination by such other person as it considers appropriate; and

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- (b) the determination of the Assembly or, as the case may be, the other person shall be final.
- (4) [<sup>F276</sup>Where the Assembly is one of the relevant authorities which has made a combined reference under section 87(8)(b) or (10)] [<sup>F276</sup>Where a combined reference is made under section 87(7C)(b) or 87(7F)] above—
- (a) the terms of the arrangements shall be determined by a person appointed by the Secretary of State and the Assembly acting jointly; and
- (b) the determination of that person shall be final.
- (5) Following determination under this section of the terms to be included in any arrangements—
- (a) the relevant authority shall give notice of the determination to the water undertaker in question; and
- (b) the undertaker shall be deemed to have entered into the arrangements under section 87(1) above on the terms determined under this section with effect from the day after the date of the notice.
- (6) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements deemed to have been entered into under that section by virtue of subsection (5)(b) above.]

#### Textual Amendments

- F273** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(2\)\(11\)-\(14\)](#), 105(3); S.I. 2008/1922, [art. 2\(a\)](#); S.I. 2009/359, [art. 2](#), (with saving in art. 3, Sch. 3)
- F274** S. 87B(2)(a) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(10\)\(a\)](#), 306(2)(3); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-9)
- F275** S. 87B(2)(b) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(10\)\(b\)](#), 306(2)(3); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-9)
- F276** Words in s. 87B(4) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 35\(11\)](#), 306(2)(3); S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-9)

#### [<sup>F277</sup>87C Fluoridation arrangements: compliance

- (1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under section 87(1) above.
- (2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—
- hexafluorosilicic acid (H<sub>2</sub>SiF<sub>6</sub>)
- disodium hexafluorosilicate (Na<sub>2</sub>SiF<sub>6</sub>).
- (3) Subject to subsection (4) below, water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under section 87(1) above).

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Subsection (3) above applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—
- (a) for the purpose of dealing with any serious deficiency in supply; or
  - (b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned, or by a [<sup>F278</sup>water supply licensee] supplying water using its or their supply system.
- (5) In this section—
- (a) the reference, in subsection (3) above, to water to which fluoride has been added pursuant to arrangements includes a reference to water to which fluoride has been added by Scottish Water in exercise of the power conferred by section 1 of the Water (Fluoridation) Act 1985; and
  - (b) in relation to a supply of such water by a water undertaker, the reference, in subsection (4) above, to the water undertakers concerned shall have effect as references to the water undertaker and Scottish Water.
- (6) In subsection (4) above, “serious deficiency in supply” means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.
- (7) Arrangements entered into under section 87(1) above shall remain in force until the relevant authority, after giving reasonable notice to the water undertaker, terminates them.
- (8) [<sup>F279</sup>But (except where it is reasonably practicable to terminate the arrangements separately), arrangements to which section 87(8)(a) or (b) applied may only be terminated by the relevant authorities acting jointly.]]

#### Textual Amendments

**F277** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)

**F278** Words in s. 87C(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 77**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(o)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

**F279** S. 87C(8) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(12)**, 306(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 88 Power to vary permitted fluoridation agents.

- (1) The Secretary of State may by order amend section [<sup>F280</sup>87C(2)] above by—
  - (a) adding a reference to another compound of fluorine; or
  - (b) removing any reference to a compound of fluorine.
- (2) The power of the Secretary of State to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F280** Words in s. 88(1) substituted (25.2.2009 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(3)**, 105(3); S.I. 2009/359, arts. 2, 3, **Sch.**

### [<sup>F281</sup>88A Power to vary target concentration of fluoride

- (1) The appropriate authority may by order made by statutory instrument provide that section 87A(1) above is to have effect as if for “one milligram per litre” there were substituted a lower concentration specified in the order.
- (2) An order under subsection (1) above may make different provision for different geographical areas, or for some such areas and not others.
- (3) A statutory instrument containing an order under subsection (1) above shall not be made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) In subsection (1) above “appropriate authority”—
  - (a) in relation to an area which is partly in England and partly in Wales, means the Secretary of State and the Assembly acting jointly;
  - (b) in relation to an area which is wholly in England, means the Secretary of State; and
  - (c) in relation to an area which is wholly in Wales, means the Assembly.
- (5) An order amending or revoking an order under subsection (1) above made by virtue of subsection (4)(a) above must also be made by the Secretary of State and the Assembly acting jointly.]

#### Textual Amendments

**F281** [S. 88A](#) inserted (25.2.2009 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(4)**, 105(3); S.I. 2009/359, **art. 2(b)** (with saving in [art. 3, Sch.](#))

### [<sup>F282</sup>88B Requirement for fluoridation proposal: England

- (1) The Secretary of State may not request a water undertaker to enter into arrangements under section 87(1) unless a fluoridation proposal is made to the Secretary of State.
- (2) A fluoridation proposal is a proposal that the Secretary of State enter into arrangements with one or more water undertakers to increase the fluoride content of the water supplied by the undertaker or undertakers to premises within such area or areas in England as may be specified in the proposal.
- (3) A fluoridation proposal may be made by one or more local authorities in England.
- (4) A local authority may not make a fluoridation proposal unless its area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.
- (5) In the following provisions of this Chapter, “proposer”, in relation to a fluoridation proposal, means the local authority or authorities which made the proposal.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) Any reference in the following provisions of this Chapter to a local authority affected by a fluoridation proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### 88C Initial consultation etc. on fluoridation proposal

- (1) This section applies if a fluoridation proposal is made.
- (2) The proposer must consult the Secretary of State as to whether the arrangements which would result from implementing the proposal would be operable and efficient.
- (3) The proposer must consult each water undertaker who supplies water to premises within the area or areas specified in the proposal as to whether the arrangements which would result from implementing the proposal, insofar as they might affect the undertaker, would be operable and efficient.
- (4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.
- (5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (3).
- (6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements would not be operable and efficient, no further steps may be taken in relation to the proposal.

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### 88D Additional requirements where other local authorities affected

- (1) This section applies where—
  - (a) a fluoridation proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,
  - (c) one or more local authorities other than the proposer are affected by the proposal, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must notify any other local authority which is affected by the proposal.

*Status: Point in time view as at 01/04/2016.*

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- (3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.
- (4) The Secretary of State must by regulations—
  - (a) make provision as to the arrangements which must be made for the purposes of subsection (3), and
  - (b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

### **88E Decision on fluoridation proposal**

- (1) This section applies where—
  - (a) a fluoridation proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,
  - (c) in a case where section 88D applies, the conditions prescribed under subsection (4)(b) of that section are satisfied, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.
- (3) The proposer may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.
- (4) But the proposal may not be modified so as to extend the boundary of any area to which it relates, or to add another area, except in circumstances prescribed in regulations by the Secretary of State.
- (5) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to make such requests under section 87(1) as are necessary to implement the proposal.
- (6) The Secretary of State may by regulations make provision—
  - (a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (5);
  - (b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (5).

*Status: Point in time view as at 01/04/2016.*

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#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 36, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### 88F Decision-making procedure: exercise of functions by committee

- (1) This section applies in relation to the exercise of functions under or by virtue of section 88E(2) to (5) (“the fluoridation functions”) except where the proposer is a single local authority and either—
  - (a) no other local authorities are affected by the proposal, or
  - (b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the fluoridation functions.
- (2) The local authorities affected by the proposal must—
  - (a) arrange for an existing joint committee of the authorities to exercise the fluoridation functions,
  - (b) establish a joint committee of the authorities for that purpose, or
  - (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the fluoridation functions.
- (3) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the fluoridation functions.
- (4) The Secretary of State may by regulations make provision—
  - (a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;
  - (b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);
  - (c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (3);
  - (d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the fluoridation functions.

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 36, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### 88G Secretary of State's duty in relation to fluoridation proposal

- (1) This section applies if the Secretary of State is requested to make such requests under section 87(1) as are necessary to implement a fluoridation proposal.



*Status: Point in time view as at 01/04/2016.*

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- (2) The Secretary of State must comply with the request if the Secretary of State is satisfied that the requirements imposed by sections 88B to 88F have been met in relation to the proposal.
- (3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88C(2) or (3), 88D(4) or 88E(2).

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 36, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### **88H Payments by local authorities towards fluoridation costs**

- (1) This section applies where a water undertaker enters into arrangements with the Secretary of State under section 87(1).
- (2) The Secretary of State may require all local authorities affected by the arrangements to make payments to the Secretary of State to meet any costs incurred by the Secretary of State under the terms of the arrangements.
- (3) The amount to be paid by each of the affected local authorities is to be determined—
  - (a) where a joint committee, or a joint sub-committee of Health and Wellbeing Boards, has exercised the fluoridation functions of the authorities in relation to the proposal which resulted in the arrangements being made and the committee or sub-committee continues to exist at the time when the Secretary of State exercises the power conferred by subsection (2), by that committee or sub-committee;
  - (b) in any other case, by agreement between the local authorities.
- (4) If the amount to be paid by the affected local authorities is not determined as mentioned in subsection (3), the Secretary of State may—
  - (a) determine the amount to be paid, or
  - (b) refer the matter for determination by such other person as the Secretary of State considers appropriate.
- (5) The amount determined in accordance with subsection (3) may, at the request of one or more of the affected local authorities, be varied with the agreement of all of them.
- (6) If the affected local authorities fail to reach agreement for the purposes of subsection (5), the Secretary of State may—
  - (a) determine whether to vary the amount (and, if so, how), or
  - (b) refer the matter for determination by such other person as the Secretary of State considers appropriate.
- (7) Any reference in this section to a local authority affected by arrangements under section 87(1) is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### **Textual Amendments**

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### **Modifications etc. (not altering text)**

**C25** S. 88H modified (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 37(3)**, 306(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### **88I Variation or termination of arrangements under section 87(1)**

- (1) The Secretary of State may not request a water undertaker to vary arrangements entered into by the water undertaker under section 87(1) unless a proposal (“a variation proposal”) is made to the Secretary of State for a variation in the arrangements.
- (2) The Secretary of State may not give notice to a water undertaker under section 87C(7) to terminate arrangements entered into by the water undertaker under section 87(1) unless a proposal (“a termination proposal”) is made to the Secretary of State for the termination of the arrangements.
- (3) Subsection (1) does not apply in relation to a variation to provide for the concentration of fluoride in the area specified in the arrangements (or any part of it) to be lower than the general target concentration.
- (4) The Secretary of State may by regulations provide that subsection (1) or (2) does not apply in prescribed circumstances.
- (5) A variation or termination proposal may be made by one or more of the local authorities affected by the arrangements.
- (6) The Secretary of State may by regulations provide that, where a termination proposal is made in relation to arrangements under section 87(1), no further termination proposal may be made in relation to the arrangements until the end of such period as may be specified in the regulations.
- (7) In the following provisions of this Chapter, “proposer”, in relation to a variation or termination proposal, means the local authority or authorities which made the proposal.
- (8) Any reference in this section and in the following provisions of this Chapter to a local authority affected by a variation or termination proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.
- (9) In relation to a proposal for the variation of the area specified in arrangements under section 87(1), any reference in this section and in the following provisions of this Chapter to a local authority affected by the proposal also includes a reference to a local authority whose area would include, coincide with or be wholly or partly within the area specified in the arrangements if the variation were made.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### Modifications etc. (not altering text)

**C26** S. 88I(2) excluded (1.4.2013) by [The Water Fluoridation \(Proposals and Consultation\) \(England\) Regulations 2013 \(S.I. 2013/301\)](#), regs. 1, 16

### 88J Initial consultation etc. on variation or termination proposal

- (1) This section applies if a variation or termination proposal is made.
- (2) In the case of a variation proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether the arrangements as varied in accordance with the proposal would be operable and efficient.
- (3) In the case of a termination proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether it would be reasonably practicable to terminate the arrangements.
- (4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.
- (5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (2) or (3).
- (6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements as varied would not be operable and efficient or (as the case may be) that it would not be reasonably practicable to terminate the arrangements, no further steps may be taken in relation to the proposal.

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### 88K Additional requirements where other local authorities affected

- (1) This section applies where—
  - (a) a variation or termination proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements as varied would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,
  - (c) one or more local authorities other than the proposer are affected by the proposal, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must notify any other local authority which is affected by the proposal.

*Status: Point in time view as at 01/04/2016.*

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- (3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.
- (4) The duty in subsection (3) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (5) The Secretary of State may by regulations provide that the duty in subsection (3) does not apply in prescribed circumstances.
- (6) The Secretary of State must by regulations—
  - (a) make provision as to the arrangements which must be made for the purposes of subsection (3), and
  - (b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 36, 306\(1\)\(d\)\(2\)\(3\)](#) (with [s. 37\(3\)](#)); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

### 88L Decision on variation or termination proposal

- (1) This section applies where—
  - (a) a variation or termination proposal is made,
  - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,
  - (c) in a case where the duty in section 88K(3) applies, the conditions prescribed under subsection (6)(b) of that section are satisfied, and
  - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.
- (3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.
- (5) The proposer of a variation proposal may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.
- (6) But, except in circumstances prescribed in regulations by the Secretary of State, the proposal may not be modified so as to propose the extension of the boundary of the area specified in the arrangements or, if the proposal is that the arrangements be varied so as to extend the boundary, may not be modified so as to propose a further extension of it.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to request the water undertaker to vary the arrangements or (as the case may be) to give notice under section 87C(7) to the water undertaker to terminate the arrangements.
- (8) The Secretary of State may by regulations may make provision—
  - (a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (7);
  - (b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (7).

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 36, 306\(1\)\(d\)\(2\)\(3\)](#) (with [s. 37\(3\)](#)); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

#### **88M Decision-making procedure: exercise of functions by committee**

- (1) This section applies in relation to the exercise of functions under or by virtue of section 88L(2) to (7) (“the relevant functions”) except where the proposer is a single local authority and either—
  - (a) no other local authorities are affected by the proposal, or
  - (b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the functions.
- (2) The local authorities affected by the proposal must—
  - (a) arrange for an existing joint committee of the authorities to exercise the relevant functions,
  - (b) establish a joint committee of the authorities for that purpose, or
  - (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the relevant functions.
- (3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.
- (5) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the relevant functions.
- (6) The Secretary of State may by regulations make provision—
  - (a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;
  - (b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);

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- (c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (5);
- (d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the relevant functions.

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 36, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### 88N Secretary of State's duty in relation to requests for variation or termination

- (1) This section applies if (following the making of a variation or termination proposal) the Secretary of State is requested—
  - (a) to request a variation of arrangements entered into under section 87(1), or
  - (b) (as the case may be) to give notice under section 87C(7) to a water undertaker to terminate such arrangements.
- (2) The Secretary of State must comply with the request if satisfied that the requirements imposed by sections 88I to 88M have been met in relation to the proposal.
- (3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88J(2) or (3), 88K(6) or 88L(2).

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 36, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### 88O Power to make regulations as to maintenance of section 87 arrangements

- (1) The Secretary of State may by regulations prescribe circumstances in which arrangements must be made in accordance with the regulations—
  - (a) for consulting and ascertaining opinion on whether arrangements under section 87(1) (“section 87(1) arrangements”) should be maintained, and
  - (b) for enabling authorities affected by section 87(1) arrangements to decide whether to propose to the Secretary of State that they be maintained.
- (2) The regulations must make provision requiring the Secretary of State to give notice under section 87C(7) to a water undertaker to terminate section 87(1) arrangements entered into by the undertaker if—
  - (a) the outcome of arrangements made by virtue of subsection (1)(b) is that the affected authorities decide not to propose that the section 87(1) arrangements be maintained, and

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- (b) the Secretary of State is satisfied that any requirements imposed by regulations under subsection (1), as to the arrangements to be made for the purposes mentioned in that subsection, have been met.
- (3) Subsection (2)(b) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed by regulations made under subsection (1).
- (4) The provision that may be made by regulations under subsection (1) (as to the arrangements to be made for the purposes mentioned in that subsection) includes provision corresponding, or similar, to any requirements imposed by or under sections 88K to 88M.]

#### Textual Amendments

**F282** Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by **Health and Social Care Act 2012 (c. 7)**, **ss. 36, 306(1)(d)(2)(3)** (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### [<sup>F284</sup>89 Consultation][<sup>F283</sup>:Wales]

- (1) Before taking any step mentioned in subsection (2) below, [<sup>F285</sup>a relevant authority][<sup>F285</sup>the Welsh Ministers] shall—
  - (a) consult and ascertain opinion in accordance with regulations made by [<sup>F286</sup>the appropriate authority][<sup>F286</sup>the Welsh Ministers]; and
  - (b) comply with the requirements set out in regulations made by [<sup>F286</sup>the appropriate authority][<sup>F286</sup>the Welsh Ministers].
- (2) The steps are—
  - (a) requesting a water undertaker to enter into arrangements under section 87(1) above;
  - (b) requesting a water undertaker to vary any such arrangements in, or except in, prescribed circumstances or cases;
  - (c) giving notice to a water undertaker under section 87C(7) above to terminate any such arrangements;
  - (d) maintaining any such arrangements in prescribed circumstances.
- (3) Regulations—
  - (a) under paragraph (a) of subsection (1) above shall include provision about the process which [<sup>F287</sup>relevant authorities][<sup>F287</sup>the Welsh Ministers] are to follow for the purposes of that paragraph;
  - (b) under paragraph (b) of that subsection shall include provision about the requirements which must be satisfied (with respect to the outcome of that process or otherwise) before a step mentioned in subsection (2) above may be taken.
- (4) Subsection (1) above shall not apply in relation to a proposal by [<sup>F288</sup>a relevant authority][<sup>F288</sup>the Welsh Ministers] to take the step mentioned in subsection (2)(c) above if [<sup>F289</sup>the appropriate authority so directs][<sup>F289</sup>the Welsh Ministers so direct] by an instrument in writing (and such a direction may apply either generally or in relation to a particular proposal).

*Status: Point in time view as at 01/04/2016.*

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- (5) <sup>F290</sup>In this section “appropriate authority”—
- (a) in a case where two or more relevant authorities (one of which is the Assembly) propose to request a particular water undertaker to take a step mentioned in subsection (2)(a), (b) or (c) in respect of arrangements in adjoining areas, means the Secretary of State and the Assembly acting jointly;
  - (b) in relation to England (except in a case to which paragraph (a) applies), means the Secretary of State; and
  - (c) in relation to Wales (except in a case to which paragraph (a) applies), means the Assembly.]]

#### Textual Amendments

- F283** Word in s. 89 heading inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(a\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F284** S. 89 substituted (18.2.2005 for E. for specified purposes, 1.8.2008 for E. for further specified purposes and 25.2.2009 for E. insofar as not already in force) by [Water Act 2003 \(c. 37\), ss. 58\(5\), 105\(3\); S.I. 2005/344, art. 2; S.I. 2008/1922, art. 2\(b\)\(c\); S.I. 2009/359, arts. 2\(c\)](#) (with saving in art. 3, Sch.)
- F285** Words in s. 89(1) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(b\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F286** Words in s. 89(1) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(c\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F287** Words in s. 89(3)(a) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(d\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F288** Words in s. 89(4) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(b\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F289** Words in s. 89(4) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(e\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F290** S. 89(5) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(f\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

#### <sup>F291</sup>90 Indemnities in respect of fluoridation.

- (1) The Secretary of State may, with the consent of the Treasury, agree to indemnify any water undertaker in respect of liabilities which it may incur in complying with arrangements entered into by it pursuant to section 87(1) above.
- (2) The Secretary of State may also, with the consent of the Treasury, agree to indemnify any <sup>F292</sup>water supply licensee] in respect of liabilities which <sup>F293</sup>the licensee] may incur—
  - (a) in supplying water to which fluoride has been added by a water undertaker by virtue of any such arrangements;
  - (b) (if the licensee is introducing water into the water undertaker’s supply system) in complying with any obligation imposed on <sup>F293</sup>the licensee] by the undertaker in consequence of the arrangements.
- (3) The Secretary of State may by regulations make provision with respect to—
  - (a) the matters in respect of which an indemnity may be given under subsection (1) or (2) above;
  - (b) the form and terms of any such indemnity; and



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(c) such ancillary matters as he sees fit.]

#### Textual Amendments

- F291** Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(6\)](#), [105\(3\)](#); S.I. 2005/344, [art. 2](#); S.I. 2009/359, [art. 2\(c\)](#) (subject to [art. 3](#), [Sch.](#))
- F292** Words in s. 90(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 78\(a\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))
- F293** Words in s. 90(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 78\(b\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

#### [<sup>F294</sup>90A Review of fluoridation

- (1) A relevant authority which has entered into arrangements under section 87(1) above shall—
    - (a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and
    - (b) in accordance with subsections (3) to (5) below publish reports containing an analysis of those effects.
  - (2) The relevant authority shall make available—
    - (a) any information collected by it for the purposes of subsection (1) above; or
    - (b) summaries of that information.
  - (3) The relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which the arrangements come into force (unless section 91(1) below applies in relation to the arrangements).
  - (4) Where section 91(1) below applies in relation to the arrangements, the relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which section 58 of the Water Act 2003 came into force.
  - (5) The relevant authority shall publish a further report under subsection (1)(b) above within each period of four years beginning with the date on which their last such report was published.
- [ The relevant authority must, in exercising its functions under subsection (1)—
- <sup>F295</sup>(5A)
  - (a) consult any local authority affected by the arrangements at such times as the relevant authority considers appropriate, and
  - (b) in particular, consult any such local authority before it publishes a report under paragraph (b) of that subsection.]
- (6) This section ceases to apply in relation to any arrangements under section 87(1) above if those arrangements are terminated.]

#### Textual Amendments

- F294** Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(6\)](#), [105\(3\)](#); S.I. 2005/344, [art. 2](#); S.I. 2009/359, [art. 2\(c\)](#) (subject to [art. 3](#), [Sch.](#))

*Status: Point in time view as at 01/04/2016.*

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**F295** S. 90A(5A) inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(14)**, 306(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**[<sup>F296</sup>91 Pre-1985 fluoridation schemes.**

- (1) With effect from the appointed day, relevant pre-1985 arrangements shall be treated for the purposes of this Chapter as if they were arrangements entered into by the water undertaker in question with the relevant authority under section 87(1) above.
- (2) The relevant authority may request such modifications to the arrangements as it considers necessary in order to give effect to subsection (1) above, for example to insert the terms mentioned in section 87(6) above.
- (3) If the relevant authority and the water undertaker fail to agree the modifications requested by the authority—
  - (a) subsection (2), (3) or, as the case may be, (4) of section 87B above shall apply as if the parties had failed to agree the terms of arrangements requested under section 87(1) above; and
  - (b) following determination of the modifications—
    - (i) the relevant authority shall give notice of the determination to the water undertaker; and
    - (ii) the arrangements shall be deemed to have been modified as so determined with effect from the day after the date of the notice.
- (4) Sections 87(11) and 89(1) above (which relate to consultation) shall not apply to the deemed entry into, and modification of, arrangements by virtue of this section.
- (5) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements treated as entered into by a water undertaker by virtue of subsection (1) above.
- (6) In this section—
 

“the appointed day” means the day on which section 58 of the Water Act 2003 comes into force; and

“relevant pre-1985 arrangements” means arrangements in pursuance of which a scheme for increasing the fluoride content of water was being operated by a water undertaker by virtue of paragraph 1 of Schedule 7 to this Act immediately before the appointed day.]

**Textual Amendments**

**F296** S. 91 substituted (26.3.2010 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(7)**, 105(3); S.I. 2010/975, art. 2(a)

**Modifications etc. (not altering text)**

**C27** S. 91 excluded (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 37(4)**, 306(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

*Status: Point in time view as at 01/04/2016.*

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## CHAPTER V

### SUPPLEMENTAL PROVISIONS OF PART III

#### 92 Power to give effect to international obligations.

- (1) Subject to subsection (2) below, the Secretary of State may by regulations provide that the provisions of Chapters I to III of this Part shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—
- (a) to any [<sup>F297</sup>EU] obligations; or
  - (b) to any international agreement to which the United Kingdom is for the time being a party.
- (2) This section shall not authorise any modification of any of sections 71, 72 and 76 above or of any other provisions of this Part so far as they have effect for the purposes of or in relation to those sections.

#### Textual Amendments

**F297** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

#### 93 Interpretation of Part III.

- (1) In this Part—
- “connection notice” shall be construed in accordance with section 45(8) above;
  - “consumer”, in relation to a supply of water provided by a water undertaker to any premises, means (except in Chapter IV) a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;
  - “food production purposes” means the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used, and for the purposes of this definition “food production premises” means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises;
  - “necessary works” includes works carried out, in exercise of any power conferred by or under any enactment, by a person other than a water undertaker;
  - “private supply” means, subject to subsection (2) below, a supply of water provided otherwise than by a water undertaker [<sup>F298</sup>or by a [<sup>F299</sup>water supply licensee] in accordance with Chapter 1A of Part 2 of this Act] (including a supply provided for the purposes of the bottling of water), and cognate expressions shall be construed accordingly;
  - “private supply notice” shall be construed in accordance with section 80(7) above;

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“water fittings” includes pipes (other than water mains), taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connection with the supply and use of water;

“wholesome” and cognate expressions shall be construed subject to the provisions of any regulations made under section 67 above.

- (2) For the purposes of any reference in this Part to a private supply, or to supplying water by means of a private supply, water shall be treated as supplied to any premises not only where it is supplied from outside those premises, but also where it is abstracted, for the purpose of being used or consumed on those premises, from a source which is situated on the premises themselves; and for the purposes of this subsection water shall be treated as used on any premises where it is bottled on those premises for use or consumption elsewhere.
- (3) For the purposes of this Part a service pipe shall be treated as connected with a water main other than a trunk main even if the connection is an indirect connection made by virtue of a connection with another service pipe.
- (4) The rights conferred by virtue of this Part as against the owner or occupier of any premises shall be without prejudice to any rights and obligations, as between themselves, of the owner and occupier of the premises.

#### **Textual Amendments**

**F298** S. 93(1): words in definition of "private supply" inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 28](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))

**F299** Words in s. 93(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 79](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(o\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, [art. 16](#))

**Status:**

Point in time view as at 01/04/2016.

**Changes to legislation:**

Water Industry Act 1991, Part III is up to date with all changes known to be in force on or before 28 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.