

*These notes refer to the Water Act 2003 (c.37) which received Royal Assent on 20th November 2003*

# WATER ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: New Regulatory Arrangements, Etc**

##### *Sections 43 to 47 Functions of the Council*

138. Certain provisions in sections 43 to 47 are devolved to the Assembly by way of the Transfer of Functions Order. In certain other cases, express provision is made in relation to the Assembly.

139.

#### **Section 43: General functions of the Council.**

This section adds seven new sections (27C to 27G, 30ZA and 30ZB) to the WIA.

140. *New section 27C* requires the Council to have regard for the interests of individuals that are disabled, chronically sick, of pensionable age, with low incomes, residing in rural areas, or not eligible to be supplied by a licensed water supplier alongside other consumers.

141. *New section 27D* requires the Council to obtain and review information about consumer matters, including consumer views on such matters, in different areas of England and Wales.

142. *New section 27E* gives the Council the function of making proposals, providing advice and information about consumer matters and representing consumer views to public authorities, water companies, licensed water suppliers, and any other body whose activities may affect the interests of the consumers.

143. Subsections (2)-(4) in new section 27E provide that the Council shall not disclose any information relating to a particular individual or body, unless the individual or body involved has given consent, the information is already available from another source or if it is the Council's opinion that the published information does not seriously and prejudicially affect the interests of the individual or body concerned.

144. In the last case the Council must consult the individual or body concerned and have regard to any opinion expressed by the Authority.

145. Subsections (5) and (6) in new section 27E put restrictions on the Council not to publish any information which relates to any matter which is or is likely to be the subject of criminal proceedings. The Council is also required in these circumstances to have regard of the opinion expressed by the Secretary of State, the Assembly or the Director of Public Prosecutions.

146. Subsection (7) in new section 27E states that the restrictions in subsections (2) to (5) do not apply to the disclosure of information to the Authority, the Secretary of State, the Assembly, the Competition Commission or any other public authority.

147. *New section 27F* gives the Council the function of providing information to consumers about consumer matters. This section only deals with information that is already available to the public. The intention is that the Council is able to bring together comparable information from different companies, or sources, and make it available (both on own initiative, and on request) in forms that are useful to consumers.
148. Subsection (4) in new section 27F requires the Council to maintain at least one office in both England and Wales, where the consumers can apply for information.
149. *New section 27G* gives the Council power to publish any information and advice about consumer matters, if it thinks it is in the interest of consumers. Subsection (3) in new section 27G restricts this power, so the Council cannot publish any information relating to a particular individual or body unless the person or body has given its consent to the publication or if the information is already available from another source or if it is the Council's opinion that the published information will not seriously and prejudicially affect the interests of the individual or body concerned.
150. Subsection (4) in new section 27G requires the Council in this last case to consult the individuals concerned and the Authority before publishing such information.
151. Subsections (5) and (6) in new section 27G puts restrictions on the Council not to publish any information which relates to any matter which is or is likely to be subject of criminal proceedings. The Council is required in these circumstances to have regard to the opinion expressed by the Secretary of State, the Assembly or the Director of Public Prosecutions.
152. *New section 30ZA* places a general duty on the Authority to consult the Council in relation to the exercise of its functions, except where the Council has requested not to be consulted or the Authority considers it to be clearly inappropriate. This general duty is in addition to any specific duties to consult the Council that are already in the Act (e.g. the requirement for the Authority to consult the Council about its code of practice in Schedule 1).
153. *New section 30ZB* requires the Authority to send to the Council a copy of any document it is required to publish under the terms of the WIA.
- 154.

#### **Section 44: Provision of information to the Council.**

This section adds four new sections (27H to 27K) to the WIA.

155. *New section 27H* grants the Council rights to direct the Authority, undertakers or licensed water suppliers to supply information it needs to carry out its functions. Those so directed must provide the information as soon as reasonably practicable and in the form the Council requires. The Council is required to have regard to the desirability of minimising the compliance burden for the Authority and the undertakers. If a body does not provide information sought by the Council, it must give the Council its reasons if the Council requires.
156. *New section 27I* allows the Council to publish reasons that the body gives for any refusal to supply it with information in its possession, provided that those to whom the information relates have consented, or it is already in the public domain, or it will not cause serious and prejudicial effects to those to whom it relates. The Council is obliged to consult such persons in this last case, and to consider the opinion of the Authority, before deciding whether to publish the reasons. Disclosure is also restricted where information relates to any matter which is, or likely to be, the subject of criminal proceedings. The Council, in deciding whether disclosure is appropriate in such cases, needs to consider the opinions of the Secretary of State, the Assembly or the Director of Public Prosecutions.

157. *New section 27J* enables the Authority, the Secretary of State or the Assembly to direct the Council to provide reasonable information which they require for the exercise of their functions. These bodies are entitled to reasons from the Council for a refusal to provide the information requested. These bodies may publish the reasons, subject to the need to exclude information the publication of which might cause serious and prejudicial effects to persons to whom it relates.
158. *New section 27K* gives the Secretary of State a power to make regulations setting out the categories of information which the Authority or an undertaker may refuse to provide when the Council requests it, or the categories of information which the Council may withhold from the Authority or the Secretary of State when a request is made.
159. Subsection (2) in new section 27K provides that an undertaker's refusal to supply information to the Council can be referred to the Authority. Under subsection (3) in new section 27K the Secretary of State may provide through regulations for another person to adjudicate failures to comply with any directions under sections 27H or 27J.
160. Subsection (4) in new section 27K sets out the duties of an adjudicator. An order against a company issued under this section is enforceable by the Authority.
- 161.

#### **Section 45: Provision of statistical information to consumers etc.**

This section adds two new sections (38B and 95B) to the Water Industry Act 1991.

162. The new 38B gives the Council a duty to publish statistical information relating to consumer complaints (made to the Authority, the Council, the Assembly, the Secretary of State or directly to undertakers or licensed water suppliers and their representatives) and the handling of those complaints. The new 95B makes similar provision for sewerage undertakers.
163. The Council has discretion over the form and frequency of the publication of the statistics.
- 164.

#### **Section 46: Consumer complaints.**

This section inserts a new section 29 into the WIA. It sets out the circumstances in which the Council should seek to resolve consumer complaints against undertakers or licensed water suppliers, unless frivolous or vexatious. The Council has powers to obtain information relevant to a complaint from the undertaker, or licensed water supplier, concerned in order to facilitate the process of seeking to resolve the complaint in a satisfactory manner. The Council does not have the power to impose a settlement between the parties in any complaint, but is required to refer certain disputes to the Authority for resolution. The Council is required to refer the matter to the Secretary of State or Assembly (where the matter relates to an undertaker whose area is wholly or mainly in Wales) if an offence has been committed or is suspected. The Council, on concluding an investigation, may make a report to the Authority, Secretary of State or the Assembly. The contents of the report may not be disclosed or published by any party without the consent of any individual complainant that is or could be identified in the report. This section also requires consumer complaints made direct to the Secretary of State, the Assembly or the Authority to be referred to the Council, unless they are frivolous or vexatious.

165.

#### **Section 47: Investigations by the Council.**

This section adds a new section to the WIA. New section 29A gives the Council scope to carry out investigations relating to the interests of consumers where no specific complaint has been made. The Council is required to consult the Authority, the

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Secretary of State and the Assembly before embarking on such an investigation. After an investigation the Council may make a report to the Authority, the Secretary of State, the Assembly, the Office of Fair Trading or any other public authority that has an interest in the matter. The Council may also publish these reports, subject to certain restrictions on disclosure of information relating to individuals or bodies. Disclosure is also restricted where information relates to any matter which is, or likely to be, the subject of criminal proceedings. The Council, in deciding whether disclosure is appropriate in such cases, needs to consider the opinions of the Secretary of State, the Assembly or the Director of Public Prosecutions.