

WATER ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: New Regulatory Arrangements, Etc

Sections 48 to 49 Enforcement of obligations 166.

Section 48: Financial penalties.

This section adds six new sections (22A to 22F) to the WIA and confers powers on an enforcement authority (the Authority, the Secretary of State, or the Assembly) to impose financial penalties on statutory undertakers and licensees.

167. *New section 22A* allows financial penalties to be imposed for contraventions of appointment conditions, licensees' conditions, statutory or other requirements, and failure to achieve standards of performance of water supply or sewerage services as prescribed under section 38(2) or 95(2) of the WIA. Subsections (1) and (2) allow for the case where a licensed water supplier has caused or contributed to a breach of an undertaker's condition of appointment or caused or contributed to an undertaker contravening a statutory or other requirement; or where an undertaker has caused or contributed to the breach of a licensed water supplier's licence or caused or contributed to the latter's contravening a statutory or other requirement. In those cases, the Authority may impose an appropriate penalty. This is to cater for the relationship between licensed water suppliers and undertakers where one may contribute to the contravention of a responsibility of the other party. References in sections 22A to 22C to contraventions include references to causing or contributing to a contravention.
168. The power does not apply to contraventions committed before the power comes into effect. Receipts from financial penalties are paid into the Consolidated Fund. The new power operates alongside existing order-making powers.
169. The penalty must be of a reasonable amount in all the circumstances of the case and in no instance should be more than 10% of the undertaker's annual turnover, as determined in an order by the Secretary of State. An enforcement authority is not able to impose a financial penalty under these provisions in respect of any infringement for which it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
170. There are procedural requirements for the imposition of a penalty, including requirements on the enforcement authority to publicise its intentions, give notices with prescribed information, and receive and consider comments from interested parties; procedures for modifying the penalty in the light of representations; and procedures for notifying the company concerned and interested parties of the final decision on the imposition of a penalty. The company may apply to the enforcement authority to pay a penalty in instalments.

- 171. *New section 22B* requires each enforcement authority to consult on and publish a statement of its policies with regard to the imposition of penalties and calculating their amount, and to take account of those policies when using these new powers.
- 172. *New section 22C* sets out time limits for the imposition of a penalty, related to the time at which the contravention occurred or, where applicable, the time at which enforcement action was initiated.
- 173. *New section 22D* makes provision for interest that if the penalty is not paid in full by the required date. However, if the company has made an application to the authority to alter dates of payment, the penalty need not be paid until this application is determined.
- 174. *New section 22E* provides for an appeal to the Court if a company seeks to question the validity of a penalty order on prescribed grounds. The requirement to pay a penalty is suspended until the case is determined. The court may cancel or reduce the penalty or extend the time-scale to pay. It may also require interest to be paid on the penalty, including on a reduced penalty.
- 175. *New section 22F* provides that where any part of a penalty has not been paid by the required date, the authority may recover the penalty and any accrued interest, as a civil debt, unless an application against the penalty has been made.
- 176.

Section 49: Enforcement of certain provisions.

This section amends the WIA. The enforcement authority currently has a duty to make an enforcement order in relation to a likely future contravention of a condition of appointment or statutory or other requirement, where a contravention has already taken place. Section 47 replaces this with a duty on the enforcement authority to act wherever there is likely to be a contravention of such a condition or requirement in future (whether or not a contravention has previously occurred).

- 177. This section accelerates the enforcement process by reducing the time for making representations in response to a notice of intention to issue an order from 28 days to 21 days. The new time limits do not apply to orders issued before the entry into force of the new provisions.