



Water Act 2003

2003 CHAPTER 37

PART 2

NEW REGULATORY ARRANGEMENTS, ETC

The Competition Commission

53 Specialist members of the Competition Commission

- (1) In section 104(1) of the Utilities Act 2000 (c. 27) (appointment of members of the Competition Commission)—
 - (a) the “or” at the end of paragraph (a) is omitted, and
 - (b) after paragraph (b) there is inserted “; or
 - (c) section 12, 14, 16A, 17K or 17P of the Water Industry Act 1991.”.
- (2) The persons who are, immediately before the commencement of subsection (1), members of the Competition Commission by virtue of appointments made under section 14(8) of the WIA shall continue as members of the Commission and their appointments shall be treated as having been made under section 104 of the Utilities Act 2000.
- (3) Section 14(8) and (8A) of the WIA (which are superseded by this section) shall cease to have effect.
- (4) The provision made by this section does not affect any group which has been selected, before the commencement of subsection (1), to perform functions of the Commission in relation to any reference under or by virtue of section 14 of the WIA.

54 Determination references under section 12 of the WIA

- (1) Section 12 of the WIA (determinations under conditions of appointment) is amended as follows.

Status: This is the original version (as it was originally enacted).

(2) After subsection (3) there is inserted—

“(3A) For the purposes of subsection (3) above, where—

- (a) the question or matter referred to the Commission concerns the review of a price control imposed on the company holding the appointment; and
- (b) the Commission is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the company in connection with the reference,

the Commission shall also have regard to the extent to which, in its view, its determination is likely to support the company’s (rather than the Authority’s) claims in relation to the question or matter referred to it.

(3B) Subsections (4) and (5) of section 14, and sections 16A and 16B, below apply to references to the Competition Commission under this section as they apply to references under section 14.

(3C) A report of the Competition Commission on a reference under this section—

- (a) shall be made to the Authority; and
- (b) shall include definite conclusions on the questions or other matters comprised in the reference, together with such an account of their reasons for those conclusions as, in the opinion of the Competition Commission, is expedient for facilitating a proper understanding of those questions or other matters and of their conclusions,

and subsections (5) and (6) of section 15 below apply to such a report as they apply to a report on a reference under section 14.”

(3) Subsections (3)(b)(i), (4) and (5) shall cease to have effect.

55 Conditions of appointments under the WIA

(1) The WIA is amended as follows.

(2) In section 14(5) (modification references to the Competition Commission)—

- (a) after “this section” there is inserted “or in carrying out functions under section 16A below”,
- (b) after “the investigation” there is inserted “or the carrying out of those functions”, and
- (c) after “such investigation” there is inserted “or such functions”.

(3) In section 16 (modification of conditions of appointment following report of Competition Commission), after subsection (4) there is inserted—

“(4A) After considering any representations or objections made in response to proposals set out in a notice under subsection (3) above, the Authority shall give notice to the Competition Commission—

- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
- (b) stating the reasons for making the modifications.

(4B) The Authority shall include with the notice under subsection (4A) above a copy of any representations or objections received in relation to the notice under subsection (3) above.

Status: This is the original version (as it was originally enacted).

- (4C) If the period of four weeks from the date on which the notice under subsection (4A) above is given elapses without a direction under section 16A(1)(a) below having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
 - (b) if a direction under section 16A(1)(b) below has been given, make the modifications which are not specified in the direction.”

(4) After section 16 there is inserted—

“16A Commission’s power of veto following report

- (1) The Competition Commission (in this section referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under section 16(4A) above, direct the Authority—
- (a) not to make the modifications set out in that notice; or
 - (b) not to make such of the modifications as may be specified in the direction;
- and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under section 16(4A) above and on the application of the Commission, direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 16(4C) above) shall be extended by fourteen days.
- (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 16(4A)(a) above as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the Commission gives a direction under subsection (1) above, it—
- (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
 - (b) shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—
 - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
 - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 16(4C)(b) above.
- (5) In exercising its power under subsection (4)(b) above, the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a company’s appointment.
- (6) Before making modifications under subsection (4)(b) above the Commission shall give notice—

Status: This is the original version (as it was originally enacted).

- (a) stating that it proposes to make the modifications and setting them out;
 - (b) stating the reason why it proposes to make them;
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) above shall be given—
- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy on the Authority and the company whose conditions of appointment it is proposed should be modified.
- (8) The Commission may not make any modification under this section which the Authority could not make under section 16 above.
- (9) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (10) This section does not apply to the modification of the conditions of a company's appointment following a report of the Commission made before the commencement of section 55 of the Water Act 2003.

16B Commission's power of veto following report: supplementary

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (9) of section 16A above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 16A above, or publishing any notice under subsection (9) of that section, the Commission must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable)—
 - (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.

Status: This is the original version (as it was originally enacted).

- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8) below, for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under section 16A above, as they apply for the purposes of any investigations on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—
- (a) subsection (2) were omitted;
 - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the Commission under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
 - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6) above, have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the Commission under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.
- (10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”