



# Water Act 2003

## 2003 CHAPTER 37

### PART 2

#### NEW REGULATORY ARRANGEMENTS, ETC

##### *Establishment, etc of new bodies*

#### **34 Water Services Regulation Authority**

- (1) After section 1 of the Water Industry Act 1991 (c. 56) (in this Act referred to as the “WIA”) there is inserted—

##### **“1A Water Services Regulation Authority**

- (1) There shall be a body corporate to be known as the Water Services Regulation Authority (in this Act referred to as “the Authority”) for the purpose of carrying out the functions conferred on or transferred to it by this Act or under or by virtue of any other enactment.
  - (2) The functions of the Authority are performed on behalf of the Crown.
  - (3) Schedule 1A to this Act shall have effect with respect to the Authority.
  - (4) In Welsh the Authority may be known as “Awdurdod Rheoleiddio Gwasanaethau Dŵr”.
- (2) Schedule 1 (which inserts the new Schedule 1A into the WIA) is to have effect.
- (3) The office of Director General of Water Services is abolished.
- (4) Section 1 of, and Schedule 1 to, the WIA (which make provision in relation to the Director General of Water Services) shall cease to have effect.

### **35 Consumer Council for Water**

(1) After section 27 of the WIA there is inserted—

*“The Consumer Council for Water*

#### **27A Establishment of the Council and committees**

- (1) There shall be a body corporate to be known as the Consumer Council for Water (in this Act referred to as “the Council”) for the purpose of carrying out the functions of the Council under this Act.
- (2) In Welsh the Council may be known as “Cyngor Defnyddwyr Dŵr”.
- (3) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (4) The Council shall establish such committees of the Council—
  - (a) as the Assembly may direct, for relevant undertakers whose areas are wholly or mainly in Wales; and
  - (b) as the Secretary of State may direct, for other relevant undertakers.
- (5) A direction under subsection (4) above may provide for the allocation of each relevant undertaker to a committee specified in the direction.
- (6) The power to give a direction under subsection (4) above may not be exercised after the end of the period of six months beginning with the commencement of section 35 of the Water Act 2003.
- (7) After the end of the period mentioned in subsection (6) above the Council may (subject to paragraph 11 of Schedule 3A to this Act)—
  - (a) establish such committees for relevant undertakers as it considers appropriate; or
  - (b) alter the allocation of a relevant undertaker to a committee established under this section.
- (8) The Council shall ensure that each relevant undertaker is allocated to a committee established under this section.
- (9) A committee established under this section is referred to in this Act as a “regional committee”.
- (10) The purposes of a regional committee shall be—
  - (a) the provision of advice and information to the Council on consumer matters affecting the areas of the relevant undertakers allocated to that committee;
  - (b) such other purposes as the Council may determine.
- (11) The provisions of Schedule 3A to this Act (which makes further provision about the Council and regional committees) shall have effect.
- (12) The Council shall exercise and perform its powers and duties in the manner which it considers is best calculated to contribute to the achievement of sustainable development.

(13) In this Chapter—

“consumers” includes both existing and future consumers;

“the interests of consumers” means the interests of consumers in relation to—

- (a) the supply of water by means of a water undertaker’s supply system to premises either by water undertakers or by licensed water suppliers acting in their capacity as such; and
- (b) the provision of sewerage services by sewerage undertakers; and

“consumer matter” means any matter connected with the interests of consumers.

## **27B Co-operation between Council and other authorities**

(1) This section imposes duties on—

- (a) the Authority and the Council;
- (b) the Council and the Secretary of State; and
- (c) the Council and the Assembly.

(2) It shall be the duty of the bodies mentioned in each paragraph of subsection (1) above to make arrangements with a view to securing—

- (a) co-operation and the exchange of information between them; and
- (b) the consistent treatment of matters which affect both of them.

(3) As soon as practicable after agreement is reached on any arrangements required by this section, the parties shall prepare a memorandum setting them out.

(4) Arrangements under this section shall be kept under review by the parties.

(5) As soon as practicable after agreement is reached on any changes to arrangements under this section, the parties shall revise their memorandum.

(6) Parties to arrangements required by this section shall send a copy of their memorandum, and any revised memorandum, to each other person mentioned in subsection (1) above who is not a party to the arrangements set out in the memorandum (or revised memorandum).

(7) The Secretary of State shall lay a copy of every memorandum or revised memorandum under this section before each House of Parliament.”

(2) Schedule 2 (which inserts the new Schedule 3A into the WIA) is to have effect.

(3) The customer service committees established under section 28(1) of the WIA are abolished.

(4) Section 28 of, and Schedule 4 to, the WIA shall cease to have effect.

## **36 Transfer to Authority and Council of functions, property etc**

(1) The functions of the Director General of Water Services are transferred to the Water Services Regulation Authority.

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

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- (2) Subject to any express amendment made by this Act, each reference to the Director General of Water Services (or to him as the Director) in the WIA (however the reference is expressed) is to have effect as a reference to the Water Services Regulation Authority (or, as the case may be, the Authority), and accordingly in the WIA “he”, “him” and cognate expressions, in relation to the Director General of Water Services, are to have effect as “it” (or the appropriate equivalent) in relation to the Water Services Regulation Authority.
- (3) The Secretary of State may make one or more schemes (“transfer schemes”) for the transfer of the property, rights and liabilities of the Director General of Water Services to the Water Services Regulation Authority (referred to below in this Part as “the Authority”) or to the Consumer Council for Water (referred to below in this Part as “the Council”).
- (4) A transfer scheme may provide for the transfer to the Council of rights and liabilities relating to persons employed in the civil service of the state.
- (5) On the day appointed by a transfer scheme, the property, rights and liabilities which are the subject of the scheme shall, by virtue of this subsection, be transferred in accordance with the provisions of the scheme.
- (6) Schedule 3 is to have effect in relation to transfer schemes and transfers under this section.

### **37 Conditions relating to costs of water regulation**

- (1) In this section “payment conditions” means conditions included in an appointment under Chapter 1 of Part 2 of the WIA by virtue of section 11(1)(c) of that Act.
- (2) The payment conditions of such an appointment may (without prejudice to the generality of section 11(1)(c)) require the payment by the company holding the appointment of sums relating to any of the expenses mentioned in subsection (3).
- (3) Those expenses are—
  - (a) the expenses of the Council, and
  - (b) the expenses of the Authority, the Secretary of State or the Assembly in relation to the establishment of the Council.
- (4) The Authority may, in accordance with this section, modify any payment conditions where it considers it necessary or expedient to do so in consequence of, or of preparations for—
  - (a) the establishment of the Council, or
  - (b) the abolition of the customer service committees established under section 28(1) of the WIA.
- (5) Where the Authority modifies under subsection (4) any payment conditions of an appointment it may make such incidental or consequential modifications as it considers necessary or expedient of the other conditions included in the appointment.
- (6) Before modifying under subsection (4) or (5) the conditions included in such an appointment, the Authority shall consult the company holding the appointment.
- (7) The powers of the Authority under subsections (4) and (5) may not be exercised after the end of the period of two years beginning with the commencement of this section.

- (8) The Secretary of State may, after consulting the Assembly, give directions to the Authority for the purpose of securing that sums relating to any of the expenses mentioned in subsection (3) are included in the sums payable by virtue of payment conditions; and the Authority shall comply with any such direction.
- (9) If this section comes into force before the coming fully into force of section 36(1), references in this section to the Authority are to be read as including references to the Director General of Water Services.

### **38 Forward work programmes and annual reports**

- (1) Before section 193 of the WIA there is inserted—

#### **“192A Forward work programmes**

- (1) The Authority and the Council shall, before each financial year, each publish a document (the “forward work programme”) containing a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.
- (2) That description must include the objectives of each project.
- (3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority or the Council expects to incur during the year in the exercise of its functions.
- (4) Before publishing the forward work programme for any year, the Authority or the Council shall give notice—
  - (a) containing a draft of the forward work programme; and
  - (b) specifying the time within which representations or objections to the proposals contained in it may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (5) The notice under subsection (4) above must be published by the Authority or the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.
- (6) The Authority must send a copy of any notice given by it under subsection (4) above to the Council, the Secretary of State and the Assembly.
- (7) The Council must send a copy of any notice given by it under subsection (4) above to the Authority, the Secretary of State and the Assembly.

#### **192B Annual and other reports**

- (1) The Authority shall, as soon as practicable after the end of each financial year, make to the Secretary of State a report (the “annual report” for that year) on—
  - (a) its activities during that year; and
  - (b) the activities of the Competition Commission during that year in respect of any references made by it.

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- (2) The annual report for each year shall include—
    - (a) a general survey of developments in respect of matters falling within the scope of the Authority’s functions;
    - (b) a report on the progress of the projects described in the forward work programme for that year;
    - (c) a summary of final and provisional orders made and penalties imposed by the Authority during the year;
    - (d) a report on such matters relating to any relevant undertaker whose area is wholly or mainly in Wales as the Assembly may from time to time require; and
    - (e) a report on such other matters as the Secretary of State may from time to time require.
  - (3) The annual report for each year shall set out any general directions given by the Secretary of State under section 27(3) above.
  - (4) The Secretary of State or (as the case may be) the Assembly shall consult the Authority before exercising the power under subsection (2)(d) or (e) above in relation to any matter.
  - (5) The Secretary of State shall—
    - (a) lay a copy of each annual report before each House of Parliament; and
    - (b) arrange for the report to be published in such manner as he considers appropriate.
  - (6) The Authority may also prepare other reports with respect to any matter falling within the scope of its functions and may arrange for any such report to be published in such manner as it considers appropriate.
  - (7) The Authority shall send a copy of each annual or other report under this section to the Assembly, the Council and the Chief Inspector of Drinking Water.
  - (8) In making or preparing any report under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.”
- (2) Sections 193 and 194 of the WIA (which make provision about annual and other reports by the Director General of Water Services and customer service committees) shall cease to have effect.

*Objectives of regulation of water industry*

**39 Objectives and duties under WIA**

- (1) Section 2 of the WIA (general duties with respect to water industry) is amended as follows.
- (2) In paragraph (a) of subsection (1), after “relevant undertakers” there is inserted “and of licensed water suppliers”.

(3) For subsection (2) there is substituted—

“(2A) The Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—

- (a) to further the consumer objective;
- (b) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of England and Wales;
- (c) to secure that companies holding appointments under Chapter 1 of Part 2 of this Act as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of those functions; and
- (d) to secure that the activities authorised by the licence of a licensed water supplier and any statutory functions imposed on it in consequence of the licence are properly carried out.

(2B) The consumer objective mentioned in subsection (2A)(a) above is to protect the interests of consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the provision of water and sewerage services.

(2C) For the purposes of subsection (2A)(a) above the Secretary of State or, as the case may be, the Authority shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes;
- (d) individuals residing in rural areas; and
- (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are not eligible to be supplied by a licensed water supplier,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(2D) For the purposes of subsection (2C) above, premises are not eligible to be supplied by a licensed water supplier if—

- (a) they are household premises (as defined in section 17C below); or
- (b) the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D below is less than the quantity specified in that subsection.

(2E) The Secretary of State and the Authority may, in exercising any of the powers and performing any of the duties mentioned in subsection (1) above, have regard to—

- (a) any interests of consumers in relation to electricity conveyed by distribution systems (within the meaning of the Electricity Act 1989);
- (b) any interests of consumers in relation to gas conveyed through pipes (within the meaning of the Gas Act 1986);
- (c) any interests of consumers in relation to communications services and electronic communications apparatus (within the meaning of the Communications Act 2003),

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which are affected by the exercise of that power or the performance of that duty.”

(4) For subsections (3) and (4) there is substituted—

“(3) Subject to subsection (2A) above, the Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated

- (a) to promote economy and efficiency on the part of companies holding an appointment under Chapter 1 of Part 2 of this Act in the carrying out of the functions of a relevant undertaker;
- (b) to secure that no undue preference is shown, and that there is no undue discrimination in the fixing by such companies of water and drainage charges;
- (c) to secure that consumers are protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (whenever made) of any of such a company’s protected land or of an interest or right in or over any of that land;
- (d) to ensure that consumers are also protected as respects any activities of such a company which are not attributable to the exercise of functions of a relevant undertaker, or as respects any activities of any person appearing to the Secretary of State or (as the case may be) the Authority to be connected with the company, and in particular by ensuring—
  - (i) that any transactions are carried out at arm’s length;
  - (ii) that the company, in relation to the exercise of its functions as a relevant undertaker, maintains and presents accounts in a suitable form and manner;
  - (iii) that, if the person is a licensed water supplier, its licence does not authorise it to carry on any activities in the area of the company;
- (e) to contribute to the achievement of sustainable development.

(4) In exercising any of the powers or performing any of the duties mentioned in subsection (1) above in accordance with the preceding provisions of this section, the Secretary of State and the Authority shall have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).”

(5) After subsection (5) there is inserted—

“(5A) In this section—

“consumers” includes both existing and future consumers; and  
 “the interests of consumers” means the interests of consumers in relation to—

- (a) the supply of water by means of a water undertaker’s supply system to premises either by water undertakers or by licensed water suppliers acting in their capacity as such; and
- (b) the provision of sewerage services by sewerage undertakers.”



- (6) In subsection (6), for paragraphs (a) and (b) there is substituted—
- “(a) subject to subsection (6A) below, the reference in subsection (1) above to the provisions of this Act relating to the regulation of relevant undertakers and of licensed water suppliers is a reference to the provisions contained in Part 2 of this Act (except section 27A, and Schedule 3A), or in any of sections 37A to 38, 39, 39B, 39C, 66B, 66D, 66F to 66H, 66K, 66L, 95, 96, 153, 181, 182, 192A, 192B, 195, 195A and 201 to 203 below;
  - (b) the reference in that subsection to the provisions relating to the financial conditions of requisitions is a reference to the provisions contained in sections 42, 43, 43A, 48, 51C, 99, 100 and 100A below; and”.
- (7) In subsection (6A), for “Subsections (2) to (4) above” there is substituted “Subsections (2A) to (4) above and section 2A below”.
- (8) In subsection (6B), for “subsections (2) to (4) above” there is substituted “subsections (2A) to (4) above and section 2A below”.
- (9) After subsection (6B) there is added—
- “(7) The duties imposed by subsections (2A) to (4) above and section 2A below do not affect the obligation of the Authority or, as the case may be, the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any Community obligation or otherwise).”

#### **40 Guidance to Authority on social and environmental matters**

After section 2 of the WIA there is inserted—

##### **“2A Guidance on social and environmental matters**

- (1) Guidance may be issued from time to time—
- (a) by the Assembly, with respect to appointment areas which are wholly or mainly in Wales; and
  - (b) by the Secretary of State, with respect to other appointment areas, about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) In formulating guidance, the Secretary of State and the Assembly shall, where practicable, have regard to the costs and benefits which may be expected to result from the guidance.
- (3) The Authority shall, in exercising and performing the powers and duties mentioned in section 2(1) above (subject to section 2(6) above), have regard to any guidance issued under this section.
- (4) Before issuing guidance under this section the Secretary of State and the Assembly shall consult—
- (a) the Authority;
  - (b) the Council;
  - (c) in the case of the Secretary of State, the Assembly and *vice versa*;

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- (d) relevant undertakers;
  - (e) licensed water suppliers; and
  - (f) such other persons as the Secretary of State or the Assembly considers it appropriate to consult in relation to the guidance.
- (5) A draft of any guidance proposed to be issued by the Secretary of State under this section shall be laid before each House of Parliament.
- (6) Guidance shall not be issued by the Secretary of State under this section until after the period of forty days beginning with—
- (a) the day on which the draft is laid before each House of Parliament; or
  - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (7) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.
- (8) In reckoning any period of forty days for the purposes of subsection (6) or (7) above, no account shall be taken of any time during which—
- (a) Parliament is dissolved or prorogued; or
  - (b) both Houses are adjourned for more than four days.
- (9) The Secretary of State and the Assembly shall arrange for any guidance issued by him or it under this section to be published in such manner as he or it considers appropriate.
- (10) In this section, an “appointment area” is an area for which an appointment is held under Chapter 1 of Part 2 of this Act.”

#### **41 Standards of performance in relation to water supply**

- (1) Section 39 of the WIA (procedure for making regulations relating to performance standards in connection with water supply) is amended as follows.
- (2) Before subsection (1) there is inserted—
- “(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.”
- (3) In subsection (1)—
- (a) for the words preceding paragraph (a), and paragraph (a), there is substituted “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—”,
  - (b) in paragraph (b), the “and” at the end of sub-paragraph (i) is omitted, and after sub-paragraph (ii) there is inserted—
    - “(iii) on the Council; and
    - (iv) on such other persons or bodies as the Secretary of State may consider appropriate;”,
  - (c) in paragraph (c)(ii), for “(b)(ii)” there is substituted “(b)”.

- (4) In subsection (2)—
- (a) in paragraph (a), for “draft provisions proposed by the Director for inclusion in” there is substituted “the Authority’s proposals for the making of”,
  - (b) in paragraph (b), for “those provisions” there is substituted “the regulations”.
- (5) In subsection (3)—
- (a) for “under section 38 above” there is substituted “on an application by the Authority under this section”,
  - (b) in paragraph (a), for “the provisions proposed by the Director in his application or those provisions” there is substituted “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”,
  - (c) in paragraph (b), the “and” at the end of sub-paragraph (i) is omitted, and after sub-paragraph (ii) there is inserted “and
    - (iii) to any person or body on whom a copy of the Authority’s application was served under subsection (1)(b) above.”
- (6) After subsection (3) there is added—
- “(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;
  - (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;

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- (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.”

#### **42 Standards of performance in relation to sewerage services**

(1) Section 96 of the WIA (procedure for making regulations relating to performance standards in connection with sewerage services) is amended as follows.

(2) Before subsection (1) there is inserted—

“(A1) The Secretary of State may make regulations under section 95 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.”

(3) In subsection (1)—

- (a) for the words preceding paragraph (a), and paragraph (a), there is substituted “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 95 above if—”,
- (b) in paragraph (b), the “and” at the end of sub-paragraph (i) is omitted, and after sub-paragraph (ii) there is inserted—
  - “(iii) on the Council; and
  - (iv) on such other persons or bodies as the Secretary of State may consider appropriate;”,
- (c) in paragraph (c)(ii), for “(b)(ii)” there is substituted “(b)”.

(4) In subsection (2)—

- (a) in paragraph (a), for “draft provisions proposed by the Director for inclusion in” there is substituted “the Authority’s proposals for the making of”,
- (b) in paragraph (b), for “those provisions” there is substituted “the regulations”.

(5) In subsection (3)—

- (a) for “under section 95 above” there is substituted “on an application by the Authority under this section”,
- (b) in paragraph (a), for “the provisions proposed by the Director in his application or those provisions” there is substituted “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”,
- (c) in paragraph (b), the “and” at the end of sub-paragraph (i) is omitted, and after sub-paragraph (ii) there is inserted “and
  - (iii) to any person or body on whom a copy of the Authority’s application was served under subsection (1)(b) above.”

(6) After subsection (3) there is added—

- “(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 95 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 95 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;
  - (b) specify the sewerage 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 sewerage 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.”

### *Functions of the Council*

## **43 General functions of the Council**

- (1) After section 27B of the WIA (which is inserted by section 35) there is inserted—

### *“General functions of the Council*

#### **27C The interests of consumers**

- (1) In considering the interests of consumers, the Council shall have regard to the interests of—

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- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes;
- (d) individuals residing in rural areas; and
- (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are not eligible to be supplied by a licensed water supplier,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

- (2) For the purposes of subsection (1) above, premises are not eligible to be supplied by a licensed water supplier if—
- (a) they are household premises (as defined in section 17C above); or
  - (b) 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.

#### **27D Acquisition and review of information**

The Council shall have the function of obtaining and keeping under review—

- (a) information about consumer matters (including matters affecting consumers in different areas); and
- (b) information about the views of consumers on such matters (including the views of consumers in different areas).

#### **27E Provision of advice and information to public authorities**

- (1) The Council shall have the function of—
- (a) making proposals, or providing advice and information, about consumer matters (including matters affecting consumers in different areas); and
  - (b) representing the views of consumers on such matters (including the views of consumers in different areas),

to public authorities, companies holding an appointment under Chapter 1 of this Part, licensed water suppliers and other persons whose activities may affect the interests of consumers.

- (2) Subject to subsection (7) below, information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be disclosed if—
- (a) the individual or body has consented to the disclosure;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

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- (4) Before deciding to disclose any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
  - (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its disclosure;and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) Subject to subsection (7) below, the Council shall not in the exercise of its function under this section disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) Subsections (2) to (5) above do not apply to a disclosure of information which is made to the Authority, the Secretary of State, the Assembly, the Competition Commission or any other public authority.
- (8) The disclosure by the Council of information in the exercise of its function under this section does not contravene section 206 below (restriction on disclosure of information).

#### **27F Provision of information to consumers**

- (1) The Council has the function of providing information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.
- (2) That function may be exercised by—
  - (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
  - (b) furnishing information to any consumer (whether in response to a request or otherwise).
- (3) Information may only be disclosed in the exercise of that function if it is information that is available to members of the public from some other source.
- (4) The Council shall maintain at least one office in each of England and Wales at which consumers may apply for information.

#### **27G Power to publish information and advice about consumer matters**

- (1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.

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- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
  - (3) Information relating to a particular individual or body may be published if—
    - (a) the individual or body has consented to the publication;
    - (b) it is information that is available to the public from some other source; or
    - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
  - (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
    - (a) consult that individual or body; and
    - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;
 and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
  - (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
  - (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
  - (7) The publication of information under this section does not contravene section 206 below (restriction on disclosure of information).”
- (2) Before section 30A of the WIA there is inserted—

*“Further functions of Authority*

### **30ZA Duty to consult Council**

- (1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—
  - (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
  - (b) the Authority considers that it would be clearly inappropriate to consult the Council.
- (2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.



### **30ZB Copies of notices**

Where the Authority is required by any provision of this Act to publish a notice or any other document, it shall send a copy of the document to the Council.”

## **44 Provision of information to the Council**

After section 27G of the WIA (which is inserted by section 43) there is inserted—

### **“27H Provision of information to the Council**

- (1) The Council may direct—
  - (a) the Authority;
  - (b) a company holding an appointment under Chapter 1 of this Part; or
  - (c) a licensed water supplier,to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.
- (2) A body to whom a direction under this section is given shall, if the information specified or described in the direction is in its possession, comply with the direction as soon as reasonably practicable.
- (3) Before giving a direction under this section and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body to whom the direction is given.
- (4) If a body to whom a direction under this section is given fails to comply with the direction it shall, if so required by the Council, give notice to the Council of the reasons for its failure.

## **27I Publication of notice of reasons**

- (1) Subject to the following provisions of this section, the Council may publish a notice given to it under section 27H(4) above.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under subsection (1) above unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
  - (a) that individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—

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- (a) consult that individual or body; and
- (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).

#### **27J Provision of information by the Council**

- (1) Any of—
  - (a) the Authority;
  - (b) the Secretary of State; or
  - (c) the Assembly,
 may direct the Council to supply to him or it, in such form as he or it may reasonably specify, such information specified or described in the direction as he or it may require for the purpose of exercising his or its functions.
- (2) The Council shall, if the information specified or described in the direction is in its possession, comply with a direction under this section as soon as reasonably practicable.
- (3) Where the Council fails to comply with a direction given under subsection (1) above it must give to the person who gave the direction notice of its reason for the failure, and that person may publish that notice in such manner as he considers appropriate.
- (4) A person publishing a notice under this section shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

#### **27K Sections 27H to 27J: supplementary**

- (1) The Secretary of State may make regulations prescribing—
  - (a) descriptions of information which a person to whom a direction is given under section 27H or 27J above may refuse to supply; or
  - (b) circumstances in which such a person may refuse to comply with a direction given under either of those sections.

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- (2) The Council may, if no person is prescribed for the purpose under subsection (3) below, refer a failure by a company holding an appointment or a licensed water supplier to comply with a direction under section 27H above to the Authority.
- (3) The Secretary of State may make regulations for the purpose of enabling a failure to comply with a direction under section 27H or 27J above to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.
- (4) A person to whom such a failure is referred (whether under subsection (2) above or regulations under subsection (3) above) shall—
  - (a) consider any representations made by either party;
  - (b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
  - (c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.
- (5) The duty of a company holding an appointment and a licensed water supplier to comply with an order under this section shall be enforceable by the Authority under section 18 above.
- (6) A notice under subsection (4) above may be published by either party to the reference.
- (7) Subsections (2) to (7) of section 27I above apply to the publication of a notice under this section as they apply to the publication of a notice given to the Council under section 27H(4) above.”

#### **45 Provision of statistical information to consumers etc**

- (1) After section 38A of the WIA there is inserted—

##### **“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 licensed water suppliers and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to water undertakers or licensed water suppliers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.”

- (2) After section 95A of the WIA there is inserted—

##### **“95B 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 sewerage undertakers and the handling of such complaints.

- (2) In subsection (1) above, “complaints” includes complaints made directly to sewerage undertakers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.”

#### **46 Consumer complaints**

- (1) For section 29 of the WIA (duties of customer service committees) there is substituted

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#### **“29 Consumer complaints**

- (1) This section applies to a complaint which any person (“the complainant”) has against a relevant undertaker or a licensed water supplier in relation to any matter connected with the functions of that undertaker or the services provided by that licensed water supplier.
- (2) Where a complaint to which this section applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsections (3) and (8) below) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (9) below.
- (3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under section 181 below, the Council shall, instead of investigating the matter to which it relates, refer the complaint to the Authority.
- (4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under section 18 or 22A above is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.
- (5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence, the Council shall refer the matter—
- (a) to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales or to services provided by a licensed water supplier using the supply system of a water undertaker whose area is wholly or mainly in Wales; or
  - (b) to the Secretary of State, in any other case.
- (6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Act, the Council shall, if the complainant consents, refer the matter to the Authority.
- (7) A referral under subsection (6) above shall have effect for the purposes of section 30A below as if it were a referral by the complainant of a dispute for determination by the Authority.
- (8) The Council is not required to investigate any matter if it appears to the Council that—

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- (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker or the licensed water supplier;
  - (b) the relevant undertaker or the licensed water supplier has not been given a reasonable opportunity to deal with the complaint; or
  - (c) in a case mentioned in subsection (4) or (5) above or (where the complainant does not consent to the matter being referred to the Authority) subsection (6) above, it is inappropriate to do so.
- (9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the complainant to the relevant undertaker or the licensed water supplier about anything to which the complaint relates.
- (10) After investigating a complaint the Council may make a report to the Authority, the Secretary of State or the Assembly.
- (11) A report under subsection (10) above may include information about—
- (a) any representations made by the Council under subsection (9) above; and
  - (b) the response of the relevant undertaker or the licensed water supplier to the complaint or any such representations.
- (12) No report under subsection (10) above or information about a complaint referred to the Council under this section, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority, the Secretary of State or the Assembly in the exercise of any power under this Act without the consent of the complainant.
- (13) Where a representation made to the Authority, the Secretary of State or the Assembly about any matter (other than a representation appearing to the person to whom it is made to be frivolous or vexatious) appears to that person —
- (a) to be about a matter which is or amounts to a complaint to which this section applies (other than one which, in the case of the Authority, it is its duty to investigate under section 181 below); and
  - (b) to have been made by or on behalf of the complainant,
- that person shall refer the matter to the Council.”
- (2) Section 30 of the WIA (duties of Director with respect to complaints) shall cease to have effect.

#### **47 Investigations by the Council**

After section 29 of the WIA there is inserted—

##### **“29A Power of Council to investigate other matters**

- (1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.

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- (2) Before undertaking an investigation under this section the Council shall consult the Authority, the Secretary of State and the Assembly.
- (3) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the OFT, the Assembly or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.
- (4) Subject to subsection (5) below, the Council may—
- (a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and
  - (b) publish any such report in such manner as the Council thinks appropriate.
- (5) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—
- (a) shall not be included in a report which is to be sent to any person under subsection (4)(a) above, unless one or more of paragraphs (a) to (c) of subsection (6) below applies; and
  - (b) shall be excluded from any such report which is to be published under subsection (4)(b) above, unless one or more of paragraphs (a) to (c) of subsection (7) below applies.
- (6) Information relating to a particular individual or body may be included in a report to be sent under subsection (4)(a) above if—
- (a) that individual or body has consented to the disclosure;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (7) Information relating to a particular individual or body may be included in a report to be published under subsection (4)(b) above if—
- (a) that individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (8) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (6)(c) or (7)(c) above, the Council shall—
- (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (6)(c) or (7)(c) above to the information or as to the desirability or otherwise of its inclusion in the report;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

- (9) The Council shall not include in any report to be sent under subsection (4)(a) above or published under subsection (4)(b) above any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (10) In considering whether information relates to any matter as mentioned in subsection (9) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.”

### *Enforcement of obligations*

## **48 Financial penalties**

- (1) After section 22 of the WIA there is inserted—

### *“Financial penalties*

#### **22A Penalties**

- (1) Where the Authority is satisfied—
- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
    - (i) has contravened or is contravening any condition of the appointment;
    - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any condition of the licence; or
    - (iii) has failed or is failing to achieve any standard of performance prescribed under section 38(2) or 95(2) below; or
  - (b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—
    - (i) has contravened or is contravening any condition of the licence; or
    - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment,
- the Authority may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) Where the Authority, the Secretary of State or the Assembly is satisfied—
- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
    - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
    - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any such requirement; or

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- (b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—
  - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
  - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any such requirement,

he or it may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

- (3) In a case in which—
  - (a) subsection (1) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection, or
  - (b) subsection (2) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection,

references in the following provisions of this section and sections 22B and 22C below to a contravention include references to causing or contributing to a contravention.

- (4) Before imposing a penalty on a company under subsection (1) or (2) above the Authority, the Secretary of State or the Assembly (the “enforcement authority”) shall give notice—
  - (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
  - (b) setting out the condition, requirement or standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and
  - (d) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (5) Before varying any proposal stated in a notice under subsection (4)(a) above the enforcement authority shall give notice—
  - (a) setting out the proposed variation and the reasons for it; and
  - (b) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (6) As soon as practicable after imposing a penalty, the enforcement authority shall give notice—
  - (a) stating that he or it has imposed a penalty on the company and its amount;



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- (b) setting out the condition, requirement or standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and
  - (d) specifying a date, no earlier than the end of the period of forty-two days from the date of service of the notice on the company, by which the penalty is required to be paid.
- (7) The company may, within twenty-one days of the date of service on it of a notice under subsection (6) above, make an application to the enforcement authority for him or it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this section shall be given—
- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
  - (b) by serving a copy of the notice on the company;
  - (c) by serving a copy of the notice on the Council; and
  - (d) where the notice is given by the Secretary of State or the Assembly, by serving a copy of the notice on the Authority.
- (9) Any sums received by the enforcement authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (10) The power of the enforcement authority to impose a penalty under this section is not exercisable in respect of any contravention or failure before the commencement of this section.
- (11) No penalty imposed by an enforcement authority under this section may exceed 10% of the turnover of the company (determined in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).
- (12) The power of the Secretary of State to make an order under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (13) An enforcement authority shall not impose a penalty under this section where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.

## **22B Statement of policy with respect to penalties**

- (1) Each enforcement authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure an enforcement authority

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shall have regard to his or its statement of policy most recently published at the time when the contravention or failure occurred.

- (3) An enforcement authority may revise his or its statement of policy and where he or it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) An enforcement authority shall undertake such consultation as he or it considers appropriate when preparing or revising his or its statement of policy.

### **22C Time limits on the imposition of financial penalties**

- (1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure later than the end of the period of twelve months from the time of the contravention or failure, unless before the end of that period—
  - (a) the notice under section 22A(4) above relating to the penalty is served on the company under section 22A(8) above; or
  - (b) a notice relating to the contravention or failure is served on the company under section 203(2) below.
- (2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 22A(4) above was served on the company under section 22A(8) above—
  - (a) within three months from the confirmation of the provisional order or the making of the final order; or
  - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

### **22D Interest and payment of instalments**

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under subsection (7) of section 22A above in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the enforcement authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the enforcement authority under that subsection, the enforcement authority may where he or it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

## **22E Appeals**

- (1) If the company on which a penalty is imposed is aggrieved by—
  - (a) the imposition of the penalty;
  - (b) the amount of the penalty; or
  - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,the company may make an application to the court under this section.
- (2) An application under subsection (1) above must be made—
  - (a) within forty-two days from the date of service on the company of a notice under section 22A(6) above; or
  - (b) where the application relates to a decision of an enforcement authority on an application by the company under section 22A(7) above, within forty-two days from the date the company is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4) below, the court—
  - (a) may quash the penalty;
  - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
  - (c) in the case of an application under subsection (1)(c) above, may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
  - (a) that the imposition of the penalty was not within the power of the enforcement authority under section 22A above;
  - (b) that any of the requirements of subsections (4) to (6) or (8) of section 22A above have not been complied with in relation to the imposition of the penalty and the interests of the company have been substantially prejudiced by the non-compliance; or
  - (c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.

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(9) In this section “the court” means the High Court.

## **22F Recovery of penalties**

Where a penalty imposed under section 22A(1) or (2) above, or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 22E above during the period within which such an application can be made; or
  - (b) an application has been made under that section and determined, the enforcement authority may recover from the company, as a civil debt due to him or it, any of the penalty and any interest which has not been paid.”
- (2) In section 195 of the WIA (keeping of a register), in subsection (2), the “and” at the end of paragraph (d) is omitted, and after paragraph (e) there is inserted—
- “(f) every penalty imposed under section 22A(1) or (2) above and every notice under section 22A(6) above;”.

## **49 Enforcement of certain provisions**

- (1) The WIA is amended as follows.
- (2) In section 18 (orders for securing compliance with certain provisions)—
  - (a) in subsection (1)(b), for “has contravened any such condition or requirement and is likely to do so again” there is substituted “is likely to contravene any such condition or requirement”,
  - (b) for subsection (4)(a)(ii) there is substituted—
    - “(ii) is likely to contravene any such condition or requirement;”.
- (3) In section 20 (procedure for orders made under section 18), in subsections (1)(c) and (4)(b), for “twenty-eight” there is substituted “twenty-one”.
- (4) Subsection (3) does not have effect in relation to—
  - (a) a provisional order which has been made before the commencement of that subsection, or
  - (b) a final order in respect of which notice has been given under section 20(1) of the WIA before the commencement of that subsection.

### *Remuneration and standards of performance*

## **50 Links between directors' pay and standards of performance**

After section 35 of the WIA there is inserted—

*“Disclosure of arrangements for remuneration*

**35A Remuneration and standards of performance**

- (1) This section applies to any company holding an appointment under Chapter 1 of this Part.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
  - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3) below; and
  - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.
- (4) A description under subsection (2)(b) above must include in particular—
  - (a) a statement of when the arrangements were made;
  - (b) a description of the standards of performance in question;
  - (c) an explanation of the means by which the standards of performance are assessed; and
  - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) above must also state—
  - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3) above; or
  - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) above must—
  - (a) include in particular the matters listed in subsection (4)(a), (b) and (c) above; and
  - (b) where the arrangements described are different from any arrangements described under subsection (2)(b) above, state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) above must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2) above—
  - (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and

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- (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
  - “remuneration” in relation to a director of a company—
    - (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
    - (b) includes remuneration in respect of any of his services while a director of the company;
  - “standards of performance”, in relation to any company, include any standards which are—
    - (a) set by or under any conditions of the company’s appointment under Chapter 1 of this Part;
    - (b) contained in or prescribed by regulations made under section 38(1)(b) or (2) or section 95(1)(b) or (2) below; or
    - (c) set or agreed to by the company.
- (11) Any requirement imposed by this section shall be treated as a statutory requirement enforceable under section 18 above by the Authority.”

### *Miscellaneous*

## **51 Reasons for decisions**

After section 195 of the WIA there is inserted—

### **“195A Reasons for decisions**

- (1) This section applies to the following decisions of the Authority, the Secretary of State or the Assembly, namely—
  - (a) the modification of the conditions of an appointment under Chapter 1 of Part 2 of this Act or the variation of the area to which an appointment relates;
  - (b) the modification of the conditions of a licence under Chapter 1A of that Part;
  - (c) the termination of such an appointment or the revocation of such a licence;
  - (d) the giving of any directions or consent in pursuance of a condition included in such an appointment by virtue of section 12(1) above or in such a licence by virtue of section 17G(3)(a) or (b) above;
  - (e) the determination of a question referred in pursuance of a condition included in such an appointment by virtue of section 12(2) above or in such a licence by virtue of section 17G(3)(c) above;
  - (f) the making of a determination under section 17E or 66D(1) above; and

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- (g) the making of a final enforcement order, the making or confirmation of a provisional enforcement order or the revocation of a final order or of a provisional order which has been confirmed.
- (2) As soon as reasonably practicable after making such a decision the Authority, the Secretary of State or the Assembly shall publish a notice stating the reasons for the decision in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.
- (3) A person publishing a notice under subsection (2) above shall serve a copy on the company holding the appointment or licence to which the decision relates.
- (4) A person preparing a notice under subsection (2) above shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.
- (5) This section does not apply in relation to a decision of the Authority resulting in any provision which the Authority was directed under section 195(3) above not to enter in the register required to be kept under that section.”

## **52 Co-operation between water regulators**

- (1) This section imposes duties on each of the following—
  - (a) the Secretary of State,
  - (b) the Assembly,
  - (c) the Environment Agency, and
  - (d) the Water Services Regulation Authority.
- (2) It is the duty of each of those mentioned in subsection (1) to make arrangements with each of the others with a view to promoting, in the case of each pair of them—
  - (a) co-operation and the exchange of information between them, and
  - (b) consistency of treatment of matters which affect both of them.
- (3) That duty relates only—
  - (a) in the case of the Water Services Regulation Authority, to its functions under the WIA relating to the regulation of water and sewerage undertakers and licensed water suppliers,
  - (b) in the case of the Secretary of State and the Assembly, to their functions of the description referred to in paragraph (a), and to their functions under the WIA relating to the quality of water supplied by water undertakers and licensed water suppliers,
  - (c) in the case of the Environment Agency, to its functions concerning water resources and water pollution so far as they relate to water and sewerage undertakers and licensed water suppliers.
- (4) As soon as practicable after agreement is reached on any arrangements required by this section, the parties must prepare a memorandum setting them out.
- (5) The parties to any such arrangements must keep them under review.

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- (6) As soon as practicable after agreement is reached on any changes to arrangements under this section, the parties must revise their memorandum.
- (7) Parties to arrangements required by this section must send a copy of their memorandum (and any revised memorandum) to each person mentioned in subsection (1) who is not a party to the arrangements set out in it.
- (8) The Secretary of State must lay before each House of Parliament a copy of every memorandum (and revised memorandum) under this section.

### *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.
- (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.



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- (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.
- (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—
  - (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—

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- (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.
- (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);

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- (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.”

*Licensing of water suppliers*

**56 Licensing of other water suppliers**

Schedule 4, which contains amendments to the WIA to provide for the licensing of suppliers of water other than water undertakers, is to have effect.