



# Water Act 2003

## 2003 CHAPTER 37

### PART 3

#### MISCELLANEOUS

##### *The Drinking Water Inspectorate*

#### **57 The Chief Inspector of Drinking Water and the Drinking Water Inspectorate**

- (1) Section 86 of the WIA (which provides for the appointment of technical assessors for the enforcement of water quality) is amended as provided in subsections (2) to (8).
- (2) In subsection (1), the words “as technical assessors” are omitted.
- (3) After subsection (1) there is inserted—
  - “(1A) Subject to subsection (1B) below, the Secretary of State shall designate one such person as the Chief Inspector of Drinking Water.
  - (1B) If the function of the Secretary of State under subsection (1) above is transferred to any extent to the Assembly—
    - (a) subject to paragraph (b) below, the Assembly may designate one such person appointed by it as the Chief Inspector of Drinking Water for Wales; but
    - (b) if the person designated by the Assembly is the same as the person designated by the Secretary of State as the Chief Inspector of Drinking Water, he shall be known as such in both capacities.”
- (4) In subsection (2), for “A person” there is substituted “ An inspector ”.
- (5) In subsection (3)(a) and (b), for “a person” there is substituted “ an inspector ”.
- (6) In subsection (4), for “person”, wherever it appears, there is substituted “ inspector ”.
- (7) In subsection (6), for the words from “on summary conviction” to the end there is substituted—

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- “(a) on summary conviction, to a fine not exceeding £20,000;  
 (b) on conviction on indictment, to a fine.”

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

“(7) Proceedings by the Secretary of State for an offence under this section or in relation to the quality and sufficiency of water supplied using a water undertaker’s supply system may be instituted and carried on in the name of the Chief Inspector of Drinking Water.

(8) Any such proceedings by the Assembly may be instituted and carried on in the name of the Chief Inspector of Drinking Water for Wales, if there is one (or, if subsection (1B)(b) above applies, in the name of the Chief Inspector of Drinking Water).

(9) In this section “inspector” means the Chief Inspector of Drinking Water or any other person appointed under subsection (1) above.”

(9) In section 219 of the WIA (general interpretation), after subsection (9) there is added—

“(10) If the Assembly designates a person as Chief Inspector of Drinking Water for Wales under section 86(1B) above, references in this Act to the Chief Inspector of Drinking Water, as respects anything to be done in relation to him, shall be taken as references to the person designated as the Chief Inspector of Drinking Water by the Secretary of State and also the person designated by the Assembly as the Chief Inspector of Drinking Water for Wales.”

(10) Subsection (7) does not have effect in relation to any offence committed before the commencement of that subsection.

#### **Commencement Information**

**II** S. 57 in force at 1.4.2004 by S.I. 2004/641, art. 3(m) (with Sch. 3 para. 57)

VALID FROM 18/02/2005

### *Water fluoridation*

#### **58 Fluoridation of water supplies**

- (1) The WIA is amended as follows.
- (2) For section 87 (fluoridation of water supplies at request of health authorities) there is substituted—

#### **“87 Fluoridation of water supplies at request of relevant authorities**

- (1) If requested in writing to do so by a relevant authority, a water undertaker shall enter into arrangements with the relevant authority to increase the fluoride content of the water supplied by that undertaker to premises within the area specified in the arrangements.

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- (2) But a water undertaker shall not be required by subsection (1) above to enter into any such arrangements until an indemnity with respect to the arrangements has been given by virtue of section 90 below—
  - (a) to the water undertaker; and
  - (b) to any licensed water supplier which is entitled to one.
- (3) In this section and the following provisions of this Chapter—
  - (a) references to a relevant authority—
    - (i) in relation to areas in England, are to a Strategic Health Authority established under section 8 of the National Health Service Act 1977;
    - (ii) in relation to areas in Wales, are to the Assembly; and
  - (b) references to water supplied by a water undertaker are to water supplied (whether by a water undertaker or a licensed water supplier) to premises using the supply system of that undertaker.
- (4) The area specified in arrangements under this section may be—
  - (a) in relation to England, the whole or any part of the area of the Strategic Health Authority in question;
  - (b) in relation to Wales, such area comprising the whole or any part of Wales as the Assembly may determine.
- (5) The arrangements shall be on such terms as may be agreed between the relevant authority and the water undertaker or, in the absence of agreement, determined in accordance with section 87B below.
- (6) Those terms shall include provision—
  - (a) requiring the relevant authority to meet the reasonable capital and operating costs incurred by the water undertaker in giving effect to the arrangements;
  - (b) specifying circumstances in which the requirement to increase the fluoride content may be temporarily suspended; and
  - (c) for the variation of the arrangements at the request of the relevant authority.
- (7) The relevant authority shall consult the Authority in relation to the terms to be included in any arrangements under this section (in particular, terms which affect the operation of the water undertaker's supply system).
- (8) If two or more relevant authorities request a particular water undertaker to enter into arrangements in respect of adjoining areas—
  - (a) the authorities shall co-operate with each other so as to secure that the arrangements (taken together) are operable and efficient; and
  - (b) if suitable terms are not agreed for all the arrangements, a combined reference may be made by the relevant authorities under section 87B below to enable the terms of each set of arrangements to be determined so that they are consistent.
- (9) If a relevant authority requests a water undertaker to vary arrangements, the authority shall co-operate with any relevant authority for an adjoining area which has entered into arrangements with the same water undertaker so as

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to secure that following the variation the arrangements (taken together) will be operable and efficient.

- (10) If suitable terms are not agreed for a variation mentioned in subsection (9), a combined reference may be made by the relevant authorities under section 87B below to enable the terms of the variation to be determined so that (following the variation) both sets of arrangements are consistent.
- (11) Before carrying out the consultation required by subsection (1) of section 89 below in relation to a step mentioned in paragraph (a), (b) or (c) of subsection (2) of that section, a relevant authority shall consult the water undertaker in question as to whether the arrangements which would result from taking that step would be operable and efficient (or, where it is proposed to terminate the arrangements, as to whether it would be reasonably practicable to do so).

#### **87A Target concentration of fluoride**

- (1) Arrangements under section 87(1) above shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.
- (2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if the relevant authority considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).
- (3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.
- (4) If, in relation to any area (“area A”), an order under section 88A(1) below specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this subsection, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of subsections (2) and (3) above).
- (5) If the result of the operation of subsection (4) above in relation to arrangements in area A is that in an area adjoining area A (“area B”) it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and subsection (4) above shall apply accordingly.
- (6) An order under section 88A(1) below which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of subsection (4) or (5) above) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).
- (7) In this section, “specified area” means the area specified in arrangements under section 87(1) above.

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### **87B Fluoridation arrangements: determination of terms**

- (1) This section applies if a relevant authority and a water undertaker fail to agree—
  - (a) the terms of arrangements requested by the relevant authority pursuant to subsection (1) of section 87 above; or
  - (b) a variation in the terms of those arrangements following a request by the relevant authority pursuant to subsection (6)(c) of that section.
- (2) In relation to areas in England (except where subsection (4) below applies)—
  - (a) the relevant authority may refer the matter to the Secretary of State for determination;
  - (b) following such a reference, the Secretary of State may—
    - (i) determine the terms of the arrangements as he sees fit; or
    - (ii) refer the matter for determination by such other person as he considers appropriate; and
  - (c) the determination of the Secretary of State or, as the case may be, the other person shall be final.
- (3) In relation to areas in Wales (except where subsection (4) below applies)—
  - (a) the Assembly may—
    - (i) determine the terms of the arrangements itself as it sees fit; or
    - (ii) refer the matter for determination by such other person as it considers appropriate; and
  - (b) the determination of the Assembly or, as the case may be, the other person shall be final.
- (4) Where the Assembly is one of the relevant authorities which has made a combined reference under section 87(8)(b) or (10) above—
  - (a) the terms of the arrangements shall be determined by a person appointed by the Secretary of State and the Assembly acting jointly; and
  - (b) the determination of that person shall be final.
- (5) Following determination under this section of the terms to be included in any arrangements—
  - (a) the relevant authority shall give notice of the determination to the water undertaker in question; and
  - (b) the undertaker shall be deemed to have entered into the arrangements under section 87(1) above on the terms determined under this section with effect from the day after the date of the notice.
- (6) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements deemed to have been entered into under that section by virtue of subsection (5)(b) above.

### **87C Fluoridation arrangements: compliance**

- (1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under section 87(1) above.

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- (2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—
    - hexafluorosilicic acid ( $\text{H}_2\text{SiF}_6$ )
    - disodium hexafluorosilicate ( $\text{Na}_2\text{SiF}_6$ ).
  - (3) Subject to subsection (4) below, water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under section 87(1) above).
  - (4) Subsection (3) above applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—
    - (a) for the purpose of dealing with any serious deficiency in supply; or
    - (b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned, or by a licensed water supplier supplying water using its or their supply system.
  - (5) In this section—
    - (a) the reference, in subsection (3) above, to water to which fluoride has been added pursuant to arrangements includes a reference to water to which fluoride has been added by Scottish Water in exercise of the power conferred by section 1 of the Water (Fluoridation) Act 1985; and
    - (b) in relation to a supply of such water by a water undertaker, the reference, in subsection (4) above, to the water undertakers concerned shall have effect as references to the water undertaker and Scottish Water.
  - (6) In subsection (4) above, “serious deficiency in supply” means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.
  - (7) Arrangements entered into under section 87(1) above shall remain in force until the relevant authority, after giving reasonable notice to the water undertaker, terminates them.
  - (8) But (except where it is reasonably practicable to terminate the arrangements separately), arrangements to which section 87(8)(a) or (b) applied may only be terminated by the relevant authorities acting jointly.”
- (3) In section 88 (power to vary permitted fluoridation agents), in subsection (1), for “87(4)” there is substituted “87C(2)”.
- (4) After section 88 there is inserted—

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### **“88A Power to vary target concentration of fluoride**

- (1) The appropriate authority may by order made by statutory instrument provide that section 87A(1) above is to have effect as if for “one milligram per litre” there were substituted a lower concentration specified in the order.
  - (2) An order under subsection (1) above may make different provision for different geographical areas, or for some such areas and not others.
  - (3) A statutory instrument containing an order under subsection (1) above shall not be made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
  - (4) In subsection (1) above “appropriate authority”—
    - (a) in relation to an area which is partly in England and partly in Wales, means the Secretary of State and the Assembly acting jointly;
    - (b) in relation to an area which is wholly in England, means the Secretary of State; and
    - (c) in relation to an area which is wholly in Wales, means the Assembly.
  - (5) An order amending or revoking an order under subsection (1) above made by virtue of subsection (4)(a) above must also be made by the Secretary of State and the Assembly acting jointly.”
- (5) For section 89 there is substituted—

### **“89 Consultation**

- (1) Before taking any step mentioned in subsection (2) below, a relevant authority shall—
  - (a) consult and ascertain opinion in accordance with regulations made by the appropriate authority; and
  - (b) comply with the requirements set out in regulations made by the appropriate authority.
- (2) The steps are—
  - (a) requesting a water undertaker to enter into arrangements under section 87(1) above;
  - (b) requesting a water undertaker to vary any such arrangements in, or except in, prescribed circumstances or cases;
  - (c) giving notice to a water undertaker under section 87C(7) above to terminate any such arrangements;
  - (d) maintaining any such arrangements in prescribed circumstances.
- (3) Regulations—
  - (a) under paragraph (a) of subsection (1) above shall include provision about the process which relevant authorities are to follow for the purposes of that paragraph;
  - (b) under paragraph (b) of that subsection shall include provision about the requirements which must be satisfied (with respect to the

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outcome of that process or otherwise) before a step mentioned in subsection (2) above may be taken.

(4) Subsection (1) above shall not apply in relation to a proposal by a relevant authority to take the step mentioned in subsection (2)(c) above if the appropriate authority so directs by an instrument in writing (and such a direction may apply either generally or in relation to a particular proposal).

(5) In this section “appropriate authority”—

- (a) in a case where two or more relevant authorities (one of which is the Assembly) propose to request a particular water undertaker to take a step mentioned in subsection (2)(a), (b) or (c) in respect of arrangements in adjoining areas, means the Secretary of State and the Assembly acting jointly;
- (b) in relation to England (except in a case to which paragraph (a) applies), means the Secretary of State; and
- (c) in relation to Wales (except in a case to which paragraph (a) applies), means the Assembly.”

(6) For section 90 (indemnities in respect of fluoridation) there is substituted—

**“90 Indemnities in respect of fluoridation**

(1) The Secretary of State may, with the consent of the Treasury, agree to indemnify any water undertaker in respect of liabilities which it may incur in complying with arrangements entered into by it pursuant to section 87(1) above.

(2) The Secretary of State may also, with the consent of the Treasury, agree to indemnify any licensed water supplier in respect of liabilities which it may incur—

- (a) in supplying water to which fluoride has been added by a water undertaker by virtue of any such arrangements;
- (b) (if the licensee is introducing water into the water undertaker’s supply system) in complying with any obligation imposed on it by the undertaker in consequence of the arrangements.

(3) The Secretary of State may by regulations make provision with respect to—

- (a) the matters in respect of which an indemnity may be given under subsection (1) or (2) above;
- (b) the form and terms of any such indemnity; and
- (c) such ancillary matters as he sees fit.

**90A Review of fluoridation**

(1) A relevant authority which has entered into arrangements under section 87(1) above shall—

- (a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and
- (b) in accordance with subsections (3) to (5) below publish reports containing an analysis of those effects.

(2) The relevant authority shall make available—



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- (a) any information collected by it for the purposes of subsection (1) above; or
  - (b) summaries of that information.
- (3) The relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which the arrangements come into force (unless section 91(1) below applies in relation to the arrangements).
- (4) Where section 91(1) below applies in relation to the arrangements, the relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which section 58 of the Water Act 2003 came into force.
- (5) The relevant authority shall publish a further report under subsection (1)(b) above within each period of four years beginning with the date on which their last such report was published.
- (6) This section ceases to apply in relation to any arrangements under section 87(1) above if those arrangements are terminated.”
- (7) For section 91 (pre-1985 fluoridation schemes) there is substituted—

**“91 Pre-1985 fluoridation schemes**

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

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

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

(8) In section 213 (powers to make regulations), after subsection (1) there is inserted—

“(1A) But on the occasion of the first exercise by the Secretary of State of the power to make regulations under each of sections 89 and 90 above, the instrument containing the regulations shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(1B) The power of the Assembly to make regulations under section 89 above shall be exercisable by statutory instrument.”

(9) Schedule 7 (pre-1985 fluoridation schemes) shall cease to have effect.

(10) In section 1(7) of the Water (Fluoridation) Act 1985 (c. 63) (water fluoridated outwith Scotland), for the words from “by a water undertaker” to the end there is substituted “pursuant to arrangements—

- (a) entered into under section 87(1) of the Water Industry Act 1991; or
- (b) treated, for the purposes of Chapter 4 of Part 3 of that Act, as if entered into under that section.”.

(11) With effect from the commencement day, any relevant application shall have effect for the purposes of subsection (1) of section 87 of the WIA as a request made by a relevant authority under that subsection.

(12) Any other application made before the commencement day ceases to have effect on that day.

(13) In subsections (11) and (12)—

“commencement day” means the day when this section comes into force, and

“relevant application” means an application which—

- (a) was made before the passing of this Act,
- (b) has not been withdrawn, and
- (c) has not been rejected in writing by the water undertaker to which it was made.

(14) In subsections (12) and (13) “application” means an application made under section 87 of the WIA as it was in force at the time when the application was made (and includes an application made under section 1 of the Water (Fluoridation) Act 1985 and having effect as if made under section 87 of the WIA).

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VALID FROM 01/10/2004

### *Water resale*

#### **59 Charges for services provided with the help of an undertaker**

- (1) Section 150 of the WIA (fixing maximum charges for services provided with the help of undertakers' services) is amended as follows.
- (2) After subsection (2) there is inserted—
  - “(2A) An order under this section may require the person providing the supplies or services to furnish the person who is provided with them with such information as may be specified or described in the order.
  - (2B) An order containing such a requirement may also provide that, in the event of the failure of the person providing the supplies or services to furnish that information, the maximum charges he is entitled to recover from the person provided with them in respect of those supplies or services shall be such as may be fixed by the order.”
- (3) In subsection (5), for the words from “the amount of the excess” to the end there is substituted—
  - “(a) the amount of the excess; and
  - (b) if the order so provides, interest on that amount at a rate specified or described in the order,shall be recoverable by that person from the person to whom he paid the charge.”

### *Penalties*

#### **60 Abstraction and impounding offences**

- (1) In each of sections 24(5)(a) and 25(3)(a) of the WRA (which deal with the penalty on summary conviction for offences relating to abstraction and impounding of water respectively), for “the statutory maximum” there is substituted “£20,000”.
- (2) Subsection (1) does not have effect in relation to any offence committed before the commencement of this section.

#### **Commencement Information**

**I2** S. 60 in force at 1.4.2004 by S.I. 2004/641, art. 3(n) (with Sch. 3 para. 7)

#### **61 Supplying water unfit for human consumption**

- (1) In section 70(1)(a) of the WIA (which provides for the penalty on summary conviction for the offence of supplying water unfit for human consumption), for “the statutory maximum” there is substituted “£20,000”.

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- (2) Subsection (1) does not have effect in relation to any offence committed before the commencement of this section.

#### Commencement Information

**I3** S. 61 in force at 1.4.2004 by S.I. 2004/641, art. 3(n) (with Sch. 3 para. 7)

VALID FROM 01/10/2004

### *Water resources management plans*

#### **62 Water resources management plans**

After section 37 of the WIA there is inserted—

##### **“37A Water resources management plans: preparation and review**

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

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- (b) if directed to do so by the Secretary of State;
- (c) in any event, not later than the end of the period of five years beginning with the date when the plan (or revised plan) was last published,

and shall follow the procedure in section 37B below (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

- (7) The Secretary of State may give directions specifying—
  - (a) the form which a water resources management plan must take;
  - (b) the planning period to which a water resources management plan must relate.
- (8) Before preparing its water resources management plan (including a revised plan), the water undertaker shall consult—
  - (a) the Environment Agency;
  - (b) the Authority;
  - (c) the Secretary of State; and
  - (d) any licensed water supplier which supplies water to premises in the undertaker’s area via the undertaker’s supply system.
- (9) The Secretary of State shall consult the Environment Agency before giving a direction under subsection (6)(b) above.
- (10) In this section, in relation to a water resources management plan, “published” means published in accordance with section 37B(8)(a) below.

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

- (1) A water undertaker shall—
  - (a) send a draft water resources management plan to the Secretary of State;
  - (b) state whether it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person); and
  - (c) give the Secretary of State the name of each such other person and his address for service of a notice under subsection (2)(a) below.
- (2) If the water undertaker states that it so appears in relation to any such information, the Secretary of State shall—
  - (a) if the person to whom or to whose business the information relates is not the water undertaker, give that person notice that the information is included in a draft water resources management plan and, unless subsection (10) below applies, is required to be published under this section; and
  - (b) give each person (including the water undertaker) to whom any such information relates a reasonable opportunity—
    - (i) of objecting to the publication of the information relating to him on the ground that it is commercially confidential; and
    - (ii) of making representations to the Secretary of State for the purpose of justifying any such objection,

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and shall determine, taking any objections and representations under paragraph (b) into account, whether the information is or is not commercially confidential.

- (3) A water undertaker shall—
  - (a) (subject to subsection (10) below) publish the draft water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it;
  - (b) publish with it a statement—
    - (i) whether any information has been excluded from the published draft plan by virtue of subsection (10) below and, if it has, the general nature of that information; and
    - (ii) that any person may make representations in writing about the plan to the Secretary of State before the end of a period specified in the statement; and
  - (c) send a copy of the published draft plan and accompanying statement to such persons (if any) as may be prescribed.
- (4) The Secretary of State shall send to the water undertaker a copy of any representations he receives following publication of the draft plan under subsection (3) above and shall give it a reasonable period of time within which to comment on the representations.
- (5) The Secretary of State may in regulations prescribe how such representations and any comments by the water undertaker on them are to be dealt with.
- (6) Regulations under subsection (5) above—
  - (a) may provide for the Secretary of State to cause an inquiry or other hearing to be held in connection with the draft water resources management plan; and
  - (b) if they do so provide, may provide for subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) to apply with prescribed modifications to such an inquiry or hearing as they apply to inquiries under that section.
- (7) The Secretary of State may direct a water undertaker that its water resources management plan must differ from the draft sent to him under subsection (1) above in ways specified in his direction, and (subject to subsection (9) below) it shall be the duty of the water undertaker to comply with the direction.
- (8) The water undertaker shall—
  - (a) (subject to subsection (10) below) publish the water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it; and
  - (b) publish with it a statement whether any information has been excluded from the published plan by virtue of subsection (10) below and, if it has, the general nature of that information.
- (9) If the water undertaker considers that publishing a water resources management plan complying with a direction under subsection (7) above

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would mean including in the published plan any information (other than any information in relation to which the Secretary of State has already made a determination under subsection (2) above) which might be commercially confidential (as regards itself or another person)—

- (a) the water undertaker shall send the Secretary of State a notice saying so, and giving the Secretary of State the name of any such other person and his address for service of a notice under subsection (2) (a) above as applied by paragraph (b) below; and
- (b) subsection (2) above shall apply in relation to that information as it applies in relation to the information referred to there;

and the Secretary of State may either confirm his direction under subsection (7) above (which is to be treated as a new direction under subsection (7)) or revoke the previous such direction (or the previous one so treated) and give a new one.

- (10) The published version of a draft water resources management plan published under subsection (3)(a) above, and a water resources management plan published under subsection (8)(a) above, shall exclude any information which the Secretary of State—
  - (a) has determined under subsection (2) above (or that subsection as applied by subsection (9) above) is commercially confidential; or
  - (b) directs the water undertaker to exclude on the ground that it appears to him that its publication would be contrary to the interests of national security.
- (11) Any steps to be taken by a water undertaker under this section shall be completed by such time or within such period as the Secretary of State may direct.

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

- (1) It shall be the duty of each licensed water supplier to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its water resources management plan.
- (2) In the event of any dispute between a water undertaker and a licensed water supplier as to the reasonableness of the water undertaker's request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.
- (3) For the purposes of paragraph (b) of section 37B(1) above, the water undertaker shall identify in its statement under that paragraph any information—
  - (a) provided by a licensed water supplier pursuant to subsection (1) above; and
  - (b) contained in the water undertaker's draft water resources management plan,

which the licensed water supplier has (at the time of providing it to the water undertaker) specifically identified as being, in the licensed water supplier's opinion, commercially confidential.

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- (4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.
- (5) In subsection (4) above—
- (a) “unpublished information” means confidential information which—
    - (i) is provided to the water undertaker by a licensed water supplier under this section;
    - (ii) relates to the affairs of any individual or to any particular business; and
    - (iii) by virtue of section 37B above, is not published;
  - (b) “the other consolidation Acts” has the same meaning as in section 206 below.

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

- (1) Directions given under section 37A or 37B above may be—
- (a) general directions applying to all water undertakers; or
  - (b) directions applying only to one or more water undertakers specified in the directions,
- and shall be given by an instrument in writing.
- (2) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.
- (3) The duties of—
- (a) a water undertaker under sections 37A to 37C above and under this section; and
  - (b) a licensed water supplier under section 37C above,
- shall be enforceable by the Secretary of State under section 18 above.”

### *Drought*

VALID FROM 01/10/2004

#### **63 Drought plans**

After section 39A of the WIA there is inserted—

##### **“39B Drought plans: preparation and review**

- (1) It shall be the duty of each water undertaker to prepare and maintain a drought plan.
- (2) A drought plan is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought



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orders or drought permits under Chapter 3 of Part 2 of the Water Resources Act 1991.

- (3) The duties referred to in subsection (2) above include in particular those imposed under or by virtue of—
  - (a) section 37 above;
  - (b) sections 67 to 69 below.
- (4) A drought plan shall address, in particular, the following matters—
  - (a) what measures the water undertaker might need to take to restrain the demand for water within its area;
  - (b) what measures the water undertaker might need to take to obtain extra water from other sources (also taking into account for that purpose the introduction of water into the undertaker’s supply system by or on behalf of licensed water suppliers);
  - (c) how the water undertaker will monitor the effects of the drought and of the measures taken under the drought plan;
  - (d) such other matters as the Secretary of State may specify in directions.
- (5) Section 37B above (water resources management plans: publication and representations), including any power in that section to make regulations or give directions, applies in relation to drought plans (including revised plans) as it applies in relation to water resources management plans.
- (6) Each water undertaker shall review (or further review) its drought plan and prepare a revised plan in each of the following cases—
  - (a) if there is a material change of circumstances;
  - (b) if directed to do so by the Secretary of State;
  - (c) in any event, not later than the end of the period of three years beginning with the date when the plan (or revised plan) was last published in accordance with section 37B(8)(a) above as applied by subsection (5) above,

and shall follow the procedure in section 37B above as applied by subsection (5) above (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).
- (7) Before preparing its drought plan (including a revised plan), the water undertaker shall consult—
  - (a) the Environment Agency;
  - (b) the Authority;
  - (c) the Secretary of State; and
  - (d) any licensed water supplier which supplies water to premises in the undertaker’s area via the undertaker’s supply system.
- (8) The Secretary of State may give directions specifying the form which a drought plan must take.
- (9) Directions given under this section (including directions given under section 37B above as applied by subsection (5) above) may be—
  - (a) general directions applying to all water undertakers; or

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- (b) directions applying only to one or more water undertakers specified in the directions,  
and shall be given by an instrument in writing.
- (10) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.
- (11) The Secretary of State shall consult the Environment Agency before giving a direction under subsection (6)(b) above.
- (12) The duty of a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.

### **39C Drought plans: provision of information**

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

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(6) The duties of a licensed water supplier and a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.”

#### 64 Drought orders and drought permits: charges

(1) In section 77 of the WRA (provisions of drought order with respect to abstractions and discharges), subsection (4) is omitted.

(2) In section 79 of the WRA (compensation and charges where drought order made), after subsection (3) there is added—

“(4) Where a water undertaker makes an application for a drought order, the Agency may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature)—

- (a) in connection with any local inquiry held in respect of the application;
- (b) in the exercise of the Agency’s functions so far as their exercise is attributable to the application and (if the order is made) to the order,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.

(5) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (4) above.”

(3) In section 79A of the WRA (drought permits)—

- (a) subsection (8) is omitted, and
- (b) after subsection (8) there is inserted—

“(8A) Where a water undertaker makes an application for a drought permit, the Agency may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature) in the exercise of its functions so far as their exercise is attributable to—

- (a) the application;
- (b) (if the permit is issued) the permit,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.

(8B) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (8A) above.”

#### Commencement Information

**I4** S. 64 in force at 1.4.2004 by S.I. 2004/641, art. 3(o) (with Sch. 3 para. 7)

#### 65 Procedure at local inquiries

In Schedule 8 to the WRA (proceedings on applications for drought orders), in paragraph 2, after sub-paragraph (6) there is added—

“(7) For the purposes of subsection (2) of section 53 of the 1995 Act (which applies subsections (2) to (5) of section 250 of the Local Government

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Act 1972 to inquiries in connection with functions of or in relation to the Agency), a local inquiry held under this paragraph with respect to an application by a water undertaker for a drought order, if it would not otherwise fall within paragraph (a) or (b) of that subsection, is to be treated as one which falls within paragraph (b).”

#### Commencement Information

**I5** S. 65 in force at 1.4.2004 by S.I. 2004/641, art. 3(p) (with Sch. 3 para. 7)

### *Land drainage and flood defence*

## 66 Revocation of local flood defence schemes

- (1) The Environment Act 1995 (c. 25) is amended as follows.
- (2) After section 18 there is inserted—

#### “18A Power to revoke local flood defence schemes

- (1) The Secretary of State may by order made by statutory instrument revoke any local flood defence scheme.
  - (2) The power to make an order under this section shall include power to make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
  - (3) The provision which may be made under subsection (2) above includes provision altering—
    - (a) the total number of members of the regional flood defence committee in whose area the local flood defence district created by the scheme was situated; and
    - (b) the total number of such members to be appointed by the constituent councils of that committee,
 and subsections (7) and (8) of section 16 of this Act shall apply in relation to so much of an order under this section as is made by virtue of this subsection as they apply in relation to an order under subsection (5) of that section.
  - (4) Paragraphs 2 to 6 of Schedule 4 to this Act, apart from paragraph 3(3), apply in relation to an order under this section as they apply in relation to an order under that Schedule, reading references there to the relevant Minister as references to the Secretary of State.”
- (3) In section 17 (local flood defence schemes, etc), in subsection (3), for “section 18” there is substituted “ sections 18 and 18A ”.

#### Commencement Information

**I6** S. 66 in force at 1.4.2004 by S.I. 2004/641, art. 3(q) (with Sch. 3 para. 7)

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## **67 Membership of regional flood defence committees in Wales**

After section 16 of the Environment Act 1995 there is inserted—

### **“16A Power to alter composition of regional flood defence committees in Wales**

- (1) This section applies in relation to any regional flood defence committee which satisfies (or, upon the coming into force of an order made under Schedule 4 to this Act, will satisfy) both of the conditions in subsection (2) below (a “Welsh committee”).
- (2) The conditions are—
  - (a) the whole or the greater part of the committee’s area is in Wales; and
  - (b) no local flood defence scheme is in force in relation to the area of the committee.
- (3) The National Assembly for Wales may by order made by statutory instrument make provision determining—
  - (a) the total number of members of a Welsh committee; and
  - (b) the method of selection and appointment of the chairman and other members of the committee (including who is to appoint them).
- (4) An order under subsection (3) above may—
  - (a) apply either to Welsh committees generally or to a particular Welsh committee;
  - (b) include such supplemental, consequential and transitional provision as the National Assembly for Wales considers appropriate.
- (5) In relation to a Welsh committee whose area is not wholly in Wales—
  - (a) the power to make an order under subsection (3) above may be exercised only with the agreement of the Secretary of State; and
  - (b) a statutory instrument containing an order under that subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order under subsection (3) above shall not be considered local in nature for the purposes of section 58(6) of the Government of Wales Act 1998 (definition of “Assembly general subordinate legislation”).
- (7) Section 15 above (or, where the order is being made in conjunction with an order under Schedule 4 to this Act, that Schedule) shall not apply for the purposes of making an order under subsection (3) above.

### **16B Effect of order under section 16A**

- (1) Sections 15 and 16 above and section 18A(3) below shall not apply to a regional flood defence committee in respect of which an order under section 16A above is in force.
- (2) In relation to any such committee, section 18 below shall have effect as if—
  - (a) paragraph (b) of subsection (4) read “other members appointed in accordance with and subject to the terms of the local flood defence scheme”; and

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(b) paragraph (c) of subsection (4), and subsection (5), were omitted.

(3) In relation to any such committee whose membership does not include any member appointed by or on behalf of a constituent council, Schedule 5 to this Act shall have effect as if—

- (a) in paragraph 1(1), the words “other than those appointed by or on behalf of one or more constituent councils” were omitted;
- (b) sub-paragraphs (2), (3) and (4) of paragraph 1 were omitted; and
- (c) paragraphs 2 and 9 were omitted.”

#### Commencement Information

**I7** S. 67 in force at 1.4.2004 by S.I. 2004/910, art. 2(1)(a)

## 68 Regional flood defence committees

(1) Paragraph 1 of Schedule 4 to the Environment Act 1995 (c. 25) (which confers power to alter the areas of regional flood defence committees) is amended as follows.

(2) In sub-paragraph (1)—

- (a) the “or” at the end of paragraph (a) is omitted, and
- (b) after paragraph (b) there is inserted—
  - “(c) establish a new regional flood defence committee for such area as may be specified in the order (other than by providing for the amalgamation of the area of any two or more such committees); or
  - (d) abolish a regional flood defence committee.”

(3) In sub-paragraph (4)—

- (a) after “committees” there is inserted “ or otherwise establishing a new regional flood defence committee ”,
- (b) in paragraph (a), after “amalgamated” there is inserted “ or new ”.

(4) In sub-paragraph (5), the “and” at the end of paragraph (b) is omitted, and after that paragraph there is inserted—

- “(ba) in relation to the establishment or abolition of a regional flood defence committee for an area the whole of which is in Wales, the National Assembly for Wales;
- (bb) in relation to the establishment or abolition of a regional flood defence committee for an area any part (but not the whole) of which is in Wales, the Secretary of State and the National Assembly for Wales acting jointly; and”.

#### Commencement Information

**I8** S. 68 in force at 1.4.2004 by S.I. 2004/641, art. 3(q) (with Sch. 3 para. 7)

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## 69 Grants for drainage works and flood warning systems

(1) Sections 147 to 149 of the WRA (which relate to grants for drainage works and flood warning systems) shall cease to have effect.

(2) For subsection (4) of section 165 of the WRA (general powers to carry out flood defence and drainage works) there is substituted—

“(4) The Agency may by agreement with any person carry out, improve or maintain, at that person’s expense, any drainage works which that person is entitled to carry out, improve or maintain; but for the purposes of this subsection the expense to be borne by that person shall not include such part (if any) of the amount of any grant made under section 47 of the Environment Act 1995 (grants to the new Agencies) as the Agency decides (subject to any terms on which the grant is made) to allocate for the works in question.”

(3) For subsection (4) of section 166 of the WRA (power to carry out works for purpose of providing flood warning system) there is substituted—

“(4) In this section—

“flood warning system” means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

- (a) rainfall, as measured at a particular place within a particular period; or
- (b) the level or flow of any inland water, or part of an inland water, at a particular time; or
- (c) other matters appearing to the Agency to be relevant for that purpose, is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

“inland water” means any of the following in any part of Great Britain, that is to say—

- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
- (b) any lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“rainfall” includes any fall of snow, hail or sleet.”

(4) In the definition of “flood defence provisions” in subsection (1) of section 221 of the WRA (general interpretation), in paragraph (a)(ii), the words “147 to 149,” are omitted.

### Commencement Information

**I9** S. 69 in force at 17.3.2004 for E. by S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7)

**I10** S. 69 in force at 1.4.2004 for W. by S.I. 2004/910, art. 2(1)(b)

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VALID FROM 01/04/2005

### *Information*

#### **70 Information**

For section 201 of the WRA (power to require information with respect to abstraction) there is substituted—

##### **“201 Power to require information in respect of water resources functions**

- (1) Subject to subsection (2) below, the Secretary of State or the Agency may serve on any person a notice requiring that person to furnish him or, as the case may be, it, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by the Secretary of State or by the Agency for the purpose of carrying out any of his or, as the case may be, its water resources functions.
- (2) The Secretary of State shall have power by regulations to make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.
- (3) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this section shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (4) References in this section to the water resources functions of the Secretary of State or of the Agency are references to the functions of the Secretary of State or of the Agency under Part 2 of this Act or under any provisions not contained in that Part which are related water resources provisions in relation to Chapter 2 of that Part.”

### *Powers of entry*

#### **71 Extension of Environment Agency’s powers of entry**

In section 169 of the WRA (powers of entry for enforcement purposes), for subsection (2) there is substituted—

- “(2) The powers conferred by subsection (1) above in relation to any premises shall include power, in order to obtain information for the purpose mentioned in subsection (1)(a) above—
- (a) to carry out experimental borings or other works on those premises; and
  - (b) to install and keep monitoring and other apparatus there.”



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#### Commencement Information

**111** S. 71 in force at 1.4.2004 by S.I. 2004/641, **art. 3(r)** (with Sch. 3 para. 67)

### *Environment Agency's general water resources duty*

## **72 Efficient use of water resources**

In section 6 of the Environment Act 1995 (c. 25) (general provisions with respect to water), in subsection (2)(b), after “Wales” there is inserted “ (including the efficient use of those resources) ”.

#### Commencement Information

**112** S. 72 in force at 1.4.2004 by S.I. 2004/641, **art. 3(s)** (with Sch. 3 para. 7)

VALID FROM 01/01/2018

### *Border rivers*

## **73 Border rivers**

In section 6 of the Environment Act 1995 (general provisions with respect to water), in subsection (3), after paragraph (c) there is inserted “ except so much of those inland waters as are in England. ”.

### *Reservoirs*

VALID FROM 01/10/2004

## **74 Environment Agency to be enforcement authority under the Reservoirs Act 1975**

(1) The Reservoirs Act 1975 (c. 23) is amended as follows—

- (a) in subsection (1) of section 2 (registration of certain reservoirs and enforcement of Act, etc), for the words from “The local authorities” to “county boroughs” there is substituted “ The relevant authorities for purposes of this Act shall be, in England and Wales, the Environment Agency ”,
- (b) in the following provisions of the Act, for “local authority”, in each place where it appears, there is substituted “ relevant authority ”
  - sections 2 and 3,
  - section 13,
  - sections 20 and 21,
  - sections 24 and 25,

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section 27,

- (c) in section 1 (ambit of Act, and interpretation), after subsection (4) there is inserted—

“(4A) The “area” of the Environment Agency, in its capacity as a relevant authority for purposes of this Act, is the whole of England and Wales.”,

- (d) in section 22(6) (institution of proceedings for an offence under the Act), for the words from “by any local authority” to “except by” there is substituted “only by the Environment Agency or”,
- (e) in Schedule 1 (index of definitions), at the appropriate places there are inserted the following entries—

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“Area (in relation to the Environment Agency)..... Section 1(4A)”

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“Relevant authority..... Section 2(1)”.

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- (2) Each body which immediately before the date of commencement of subsection (1) (referred to in this section as the “commencement date”) is a local authority in England or Wales for the purposes of the Reservoirs Act 1975 (c. 23) shall, as soon as practicable after that date, give to the Environment Agency—
- (a) the register maintained by the body under section 2(2) of that Act, and
  - (b) any other documents, records or other information in its possession which relate to the exercise of the body’s functions as an enforcement authority within the meaning of section 2(6) of that Act (referred to in this section as its “enforcement functions”).
- (3) It shall be the duty of a body falling within subsection (2) to give to the Environment Agency all such assistance as the Environment Agency may reasonably require for the purposes of facilitating the taking over by the Environment Agency of the body’s enforcement functions.
- (4) Nothing in this section affects the validity of anything done by or in relation to such a body in the exercise of its enforcement functions before the commencement date.
- (5) There may be continued by or in relation to the Environment Agency anything (including legal proceedings) which relates to any of such a body’s enforcement functions and is in the process of being done by or in relation to the body immediately before the commencement date.
- (6) Anything which was done by such a body for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the commencement date shall have effect as if done by the Environment Agency.

## 75 Extension of enforcement authority’s reserve powers

- (1) The Reservoirs Act 1975 is amended as follows.

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(2) In section 8 (powers of enforcement authority in event of non-compliance with certain requirements), after subsection (3) there is inserted—

“(3A) Where it appears to the enforcement authority that the report of an engineer acting under this section includes a recommendation as to measures to be taken in the interests of safety that has not been carried into effect as required by this section, the authority may by written notice served on the undertakers require them to carry the recommendation into effect within a time specified in the notice.

(3B) Where an enforcement authority propose to serve such a notice, the authority shall consult as to the time to be specified in the notice a civil engineer, being a qualified civil engineer for the purpose of inspecting and supervising the reservoir under this section.”

(3) In section 15 (reserve powers), in subsection (2), after “section” there is inserted “ 8, ”.

(4) In section 17 (powers of entry), in subsection (1)(b), after “section”, in both places, there is inserted “ 8, ”.

#### Commencement Information

**I13** S. 75 in force at 1.4.2004 for E. by S.I. 2004/641, art. 3(t) (with Sch. 3 para. 7)

**I14** S. 75 in force at 1.4.2004 for W. by S.I. 2004/910, art. 2(1)(e)

VALID FROM 01/10/2004

#### 76 Service of documents

(1) In section 15(4) of the Reservoirs Act 1975 (c. 23) (reserve powers of enforcement authorities) for “section 233 of the Local Government Act 1972” there is substituted “section 123 of the Environment Act 1995 as it is applied by section 22A of this Act”.

(2) After section 22 of that Act there is inserted—

#### “22A Service of notices by the Environment Agency

Section 123 of the Environment Act 1995 (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be served or given by the Environment Agency as if it were authorised or required to be served or given by or under that Act.”

VALID FROM 01/10/2004

#### 77 Flood plans: large raised reservoirs

After section 12 of the Reservoirs Act 1975 there is inserted—

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## *“Flooding*

### **12A Flood plans: large raised reservoirs**

- (1) The Secretary of State may, by written notice served on the undertakers in relation to a large raised reservoir, direct them to prepare a plan (a “flood plan”) setting out the action they would take in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.
- (2) A direction may in particular—
  - (a) specify the matters to be included in the flood plan;
  - (b) require the flood plan to be prepared in accordance with such methods of technical or other analysis as may be specified by the Environment Agency;
  - (c) require the flood plan, or any information about the matters contained in it, to be given to the Environment Agency at such time or times as may be directed by that Agency or by the Secretary of State;
  - (d) require a copy of the flood plan to be sent to such persons as may be specified in the direction;
  - (e) require publication of the flood plan, in such manner as may be specified in the direction, for the purpose of bringing the matters contained in the flood plan to the attention of persons likely to be interested.
- (3) Before giving a direction under this section the Secretary of State shall consult—
  - (a) the undertakers concerned;
  - (b) the Environment Agency;
  - (c) if the reservoir concerned is in England, the county council, metropolitan district council or London borough council in whose area the reservoir is situated;
  - (d) if the reservoir concerned is in Wales, the county council or county borough council in whose area the reservoir is situated;
  - (e) such persons appearing to the Secretary of State to represent the emergency services in the area where the reservoir is situated; and
  - (f) such other persons (if any) as the Secretary of State considers appropriate.
- (4) If—
  - (a) the functions of the Secretary of State under the preceding provisions of this section are transferred to the National Assembly for Wales so far as exercisable in relation to Wales;
  - (b) no direction has been given by the Assembly under subsection (1) above in relation to a reservoir in Wales; and
  - (c) it appears to the Secretary of State that it is necessary or expedient in the interests of public safety in England that such a direction be given,he may give a direction under that subsection in relation to that reservoir.

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(5) This section is subject to section 12B below.”

VALID FROM 01/10/2004

## 78 National security

(1) In section 2 of the Reservoirs Act 1975 (c. 23) (registration of reservoirs and enforcement of Act, etc), after subsection (2) there is inserted—

“(2A) If it appears to the Secretary of State that the inclusion of any information in the register maintained under subsection (2) above by the Environment Agency would be contrary to the interests of national security, he may direct the Agency not to include that information in the register.”

(2) After section 12A of that Act (which is inserted by section 77 of this Act) there is inserted—

### “12B Flood plans and national security

(1) If it appears to the Secretary of State that in the interests of national security any person or class of persons referred to in any one or more of paragraphs (a) to (e) of section 12A(3) above should not be consulted about a proposed direction, he may treat that subsection as not referring to that person or to that class of person.

(2) In relation to any reservoir (whether a large raised reservoir or not, as the case may be) the Secretary of State may, by written notice served on the undertakers, require them not to publish, or not to publish except as specified in the notice—

- (a) a flood plan prepared by them pursuant to a notice given under section 12A above;
- (b) any corresponding plan prepared by them other than pursuant to such a notice,

and a notice under this subsection may also require the undertakers to withhold access to any such plan from any person except as specified in the notice.”

VALID FROM 01/10/2004

## 79 Offences

(1) Section 22 of the Reservoirs Act 1975 (c. 23) (criminal liability of undertakers and their employees) is amended as follows.

(2) In subsection (1), the word “or” at the end of paragraph (a) is omitted, and at the end of paragraph (b) there is inserted “or

- (c) the undertakers fail to comply with a direction under section 12A above;”.

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(3) After subsection (1) there is inserted—

“(1A) If the undertakers fail without reasonable excuse to comply with a notice under section 12B above, they shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.”

VALID FROM 01/10/2004

## 80 Crown application

After section 27 of the Reservoirs Act 1975 there is inserted—

*“Crown application*

### **27A Crown application**

- (1) Subject to the provisions of this section, this Act binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may, on the application of the Environment Agency, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding anything in subsection (2) above, the provisions of this Act shall apply to persons in the public service of the Crown as they apply to other persons.
- (4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any power of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.
- (5) Subject to subsection (4) above, the power conferred by section 17 above shall be exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.
- (6) Nothing in this section shall be taken as in any way affecting Her Majesty in Her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references to Her Majesty in Her private capacity) were contained in this Act.
- (7) In this section—
 

“the appropriate authority” has the same meaning as it has in Part 13 of the Town and Country Planning Act 1990 by virtue of section 293(2) of that Act;

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“Crown or Duchy interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;  
“Crown premises” means premises held by or on behalf of the Crown.

- (8) The provisions of subsection (3) of section 293 of the Town and Country Planning Act 1990 (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.”

### *Water conservation*

## **81 Duty to encourage water conservation**

- (1) The relevant authority must, where appropriate, take steps to encourage the conservation of water.
- (2) The relevant authority is—
  - (a) the Secretary of State, in relation to England,
  - (b) the Assembly, in relation to Wales.
- (3) After the period of three years beginning with the date on which this section comes into force, and after each succeeding period of three years, the Secretary of State must prepare a report about the steps taken by him under this section, and about any such steps which he proposes to take.
- (4) The Assembly may make an order requiring the preparation by it of corresponding reports, and such an order may make provision about when, or in relation to what periods, they are to be prepared.
- (5) Each such report must—
  - (a) if prepared by the Secretary of State, be laid before Parliament,
  - (b) if prepared by the Assembly, be laid before, and published by, the Assembly.

#### **Commencement Information**

**I15** S. 81 in force at 1.4.2004 for E. by S.I. 2004/641, art. 3(u) (with Sch. 3 para. 7)

## **82 Water conservation: requirements on relevant undertakers**

In section 3(2)(a) of the WIA (environmental duties in relation to proposals relating to the functions of a relevant undertaker), after “special interest” there is inserted “ and, in the case of the exercise of such a power by a company holding an appointment as a relevant undertaker, as to further water conservation ”.

#### **Commencement Information**

**I16** S. 82 in force at 1.4.2004 by S.I. 2004/641, art. 3(u) (with Sch. 3 para. 7)

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### 83 Water conservation by public authorities

- (1) In exercising its functions and conducting its affairs, each public authority shall take into account, where relevant, the desirability of conserving water supplied or to be supplied to premises.
- (2) In subsection (1), “public authority” means any of the following—
- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 (c. 26)),
  - (b) a Government department,
  - (c) the Assembly,
  - (d) a local authority (within the meaning of section 270(1) of the Local Government Act 1972 (c. 70)),
  - (e) a person holding an office—
    - (i) under the Crown,
    - (ii) created or continued in existence by a public general Act, or
    - (iii) the remuneration in respect of which is paid out of money provided by Parliament,
  - (f) a statutory undertaker (being any person who, by virtue of section 262 of the Town and Country Planning Act 1990 (c. 8) is or is deemed to be a statutory undertaker for any purpose), and
  - (g) any other public body of any description.

#### Commencement Information

**I17** S. 83 in force at 1.4.2004 by S.I. 2004/641, art. 3(u) (with Sch. 3 para. 7)

### *Fire hydrants*

### 84 Fire hydrants

- (1) After subsection (4) of section 57 of the WIA (duty to supply water etc for fire-fighting) there is inserted—
- “(4A) Where a fire-hydrant is removed (other than at the request of the fire authority concerned) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.”
- (2) After subsection (4) of section 58 of the WIA (specially requested fire-hydrants) there is inserted—
- “(4A) Where a specially requested fire-hydrant is removed (other than at the request of the owner or occupier of the factory or place of business in question) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.”



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#### Commencement Information

**I18** S. 84 in force at 1.4.2004 by S.I. 2004/641, art. 3(v) (with Sch. 3 para. 7)

### *Coal mine water pollution*

## **85 Control of water from coal mines**

(1) After section 4 of the Coal Industry Act 1994 (c. 21) there is inserted—

### **“4A Power of the Authority with respect to coal mine water discharge**

- (1) The Authority may take such action as it considers appropriate (if any) for the purpose of preventing, or mitigating the effect of, the discharge of water from a coal mine into or on to any land or into any controlled waters.
- (2) In this section and sections 4B and 4C below—
  - (a) “controlled waters” has the meaning given by section 104 of the Water Resources Act 1991; and
  - (b) references to coal mines are to coal mines vested in the Authority.

### **4B Coal mine water discharge: powers of entry**

- (1) If the Authority is of the opinion that a discharge of water from a coal mine into or on to any land or into any controlled waters has caused, is causing or is likely to cause—
  - (a) serious pollution of the environment; or
  - (b) danger to life or health,the Authority may, for any purpose specified in subsection (2) below, in writing authorise a person to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (3) below.
- (2) The purposes are—
  - (a) to determine the extent of the pollution or of the danger, or the likelihood of serious pollution or such danger;
  - (b) to determine whether, and, if so, how, the Authority should exercise its power under section 4A above;
  - (c) to take action under that section.
- (3) The powers are—
  - (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, using reasonable force) any premises which the authorised person has reason to believe it is necessary for him to enter;
  - (b) to use a vehicle or a boat to do so;
  - (c) on entering any premises by virtue of paragraph (a) above, to take with him—
    - (i) any other person authorised by the Authority and, if the authorised person reasonably believes he is likely to be obstructed, a constable; and

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- (ii) any equipment or materials needed for any purpose for which the power of entry is being exercised;
  - (d) to make such examination and investigation as may in any circumstances be necessary;
  - (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d) above;
  - (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air or water or land in, on, or in the vicinity of, the premises;
  - (g) to require any person to give him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this section.
- (4) The powers which are conferred in relation to any land by this section include power, for the purposes mentioned in subsection (2) above—
- (a) to carry out experimental borings or other works on those premises; and
  - (b) to install, keep or maintain monitoring and other apparatus there.
- (5) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this section shall only be effected—
- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question; and
  - (b) either—
    - (i) with the consent of a person who is in occupation of those premises; or
    - (ii) under the authority of a warrant by virtue of Schedule 1A to this Act.
- (6) Except in an emergency, where an authorised person proposes to enter any premises and—
- (a) entry has been refused and he reasonably believes that the use of force may be necessary to effect entry; or
  - (b) he reasonably believes that entry is likely to be refused and that the use of force may be necessary to effect entry,
- any entry on to those premises by virtue of this section shall be effected only under the authority of a warrant by virtue of Schedule 1A to this Act.
- (7) In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, subsections (1) to (3) above shall have effect subject to section 6(3) of the Atomic Energy Authority Act 1954 (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911).
- (8) Schedule 1A to this Act shall have effect with respect to the powers of entry and related powers which are conferred by this section.

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- (9) In this section, “premises” includes any land, vehicle or vessel, and any plant which is designed to move or be moved (whether or not on roads).

#### **4C Coal mine water discharge: compulsory purchase of land**

- (1) The Authority may be authorised by the Secretary of State to purchase compulsorily any land anywhere in England and Wales where he is of the opinion that—
- (a) the purchase is required by the Authority for the purpose of preventing, or mitigating the effect of, a discharge of water from a coal mine; and
  - (b) the discharge has caused, is causing or is likely to cause significant pollution of controlled waters or serious harm to human health.
- (2) The power of the Secretary of State under subsection (1) above shall include power—
- (a) to authorise the acquisition of interests in, and rights over, land by the creation of new interests and rights; and
  - (b) by authorising the acquisition by the Authority of any rights over land which is to be or has been acquired by the Authority, to provide for the extinguishment of those rights.
- (3) Without prejudice to the generality of subsection (1) above, the land which the Authority may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.
- (4) The Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by the Authority; and Schedule 3 to that Act shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.
- (5) Schedule 1B to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.”
- (2) Schedules 5 and 6 (which respectively insert Schedules 1A and 1B into the Coal Industry Act 1994 (c. 21)) are to have effect.
- (3) In subsection (7) of section 68 of the Coal Industry Act 1994 (extent, etc), before paragraph (a) there is inserted—
- “(za) sections 4A to 4C and Schedules 1A and 1B;”.

#### **Commencement Information**

**I19** S. 85 in force at 1.4.2004 by S.I. 2004/641, art. 3(w) (with Sch. 3 para. 7)

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VALID FROM 01/10/2004

### *Contaminated land*

#### **86 Contaminated land: pollution of controlled waters**

- (1) The Environmental Protection Act 1990 (c. 43) is amended as follows.
- (2) In section 78A (which contains provisions for the interpretation of Part 2A of the 1990 Act, relating to contaminated land)—
  - (a) for subsection (2)(b) there is substituted—
    - “(b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused;”
  - (b) in subsection (5)—
    - (i) in paragraph (a), after “harm” there is inserted “ or pollution of controlled waters ”,
    - (ii) in paragraph (b), after “harm” there is inserted “ or of significant pollution of controlled waters ”, and
    - (iii) paragraph (c) is omitted,
  - (c) in subsection (6)—
    - (i) in paragraph (a), after “systems” there is inserted “ , or of poisonous, noxious or polluting matter or solid waste matter ”,
    - (ii) in paragraph (b), after “places” there is inserted “ or controlled waters, or different degrees of pollution ”, and
    - (iii) after “significant harm” there is inserted “ or of significant pollution ”,
  - (d) in subsection (7)(b)(i), before “pollution” there is inserted “ significant ”,
  - (e) in subsection (8), for the words from “pollution” to the end there is substituted “ significant pollution of those waters is being caused or there is a significant possibility of such pollution being caused ”, and
  - (f) in subsection (9), in paragraph (a) of the definition of “controlled waters”, after “1991” there is inserted “ except that “ground waters” does not include waters contained in underground strata but above the saturation zone ”.
- (3) In section 78C (identification and designation of special sites), in subsection (10)—
  - (a) in paragraph (a)(ii), for “be, or would be likely to be, caused” there is substituted “ or might be caused ”, and
  - (b) in paragraph (b), before “pollution” there is inserted “ significant ”.
- (4) In section 78E (duty of enforcing authority to require remediation of contaminated land), in subsection (4)(b), after “or” there is inserted “ of the ”.
- (5) In section 78K (liability in respect of contaminating substances which escape to other land), in each of subsections (3) and (4), for the words from “is being caused” to “likely to be caused” there is substituted “ , or significant pollution of controlled waters, is being caused, or there is a significant possibility of such harm or pollution being caused ”.
- (6) In section 78X (supplementary provisions relating to contaminated land)—

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- (a) in subsection (1)—
    - (i) for paragraph (b) there is substituted—
      - “(b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused,” and
    - (ii) for the words from “is being caused, or” to “likely to be caused” there is substituted “ , or significant pollution of controlled waters, is being caused, or there is a significant possibility of such harm or pollution being caused ”, and
  - (b) in subsection (2), for the words from “is being caused” to “likely to be, caused” there is substituted “ , or significant pollution of controlled waters, is being caused, or there is a significant possibility of such harm or pollution being caused ”.
- (7) In section 78YB (interaction of Part 2A of the Environmental Protection Act 1990 (c. 43) with other enactments), in each of subsections (1)(b) and (2), before “pollution” there is inserted “ significant ”.

VALID FROM 01/10/2004

### *Discharge consents*

#### **87 Transfer of discharge consents**

- (1) Paragraph 11 of Schedule 10 to the WRA (transfer of discharge consents) is amended as follows.
- (2) In sub-paragraph (2), the words “ , subject to sub-paragraph (4) below,” are omitted.
- (3) In sub-paragraph (3), the words “ , subject to sub-paragraph (4) below,” are omitted.
- (4) Sub-paragraph (4) is omitted.
- (5) For sub-paragraph (6) there is substituted—
  - “(6) Where a consent under paragraph 3 or 6 above is to be transferred under sub-paragraph (1) above—
    - (a) the person from whom and the person to whom the consent is to be transferred shall give joint notice to the Agency of the proposed transfer;
    - (b) the notice may specify the date on which it is proposed that the transfer should take effect;
    - (c) within twenty-one days beginning with the date of receipt of the notice duly given in accordance with sub-paragraph (6A) below, the Agency shall—
      - (i) arrange to amend the consent by substituting the name of the transferee as holder of the consent; and
      - (ii) serve notice on the transferor and the transferee that the amendment has been made; and
    - (d) the transfer shall take effect from the later of—

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- (i) the date on which the Agency amends the consent; and
- (ii) the date (if any) specified in the joint notice under paragraph (a) above.

(6A) A joint notice under sub-paragraph (6)(a) above shall include such information as may be prescribed.

(6B) If the person from whom the consent is to be transferred is a person in whom the consent has vested by virtue of sub-paragraph (2) or (3) above, a joint notice given under sub-paragraph (6)(a) above shall be of no effect unless the notice required by sub-paragraph (7) below has been given.

(6C) A notice or other instrument given by or on behalf of the Agency pursuant to sub-paragraph (6) above shall not constitute an instrument signifying the consent of the Agency for the purposes of paragraph 8 above.”

(6) In sub-paragraph (9), the words “(6) or” are omitted.

PROSPECTIVE

### *Trade effluent consents*

#### **88 Trade effluent consents**

(1) For section 139 of the WIA (power to apply Chapter 3 of Part 4 of the WIA to other effluents) there is substituted—

#### **“139 Power to apply Chapter 3 to specified activities**

(1) The Secretary of State may by order provide, in relation to discharge into public sewers—

(a) that a liquid or other matter of a description specified in the order shall be treated as if it were trade effluent for the purposes of this Chapter; or

(b) that—

(i) the discharge restrictions shall not apply to a liquid or other matter of a description specified in the order; and

(ii) (in the case of a liquid) the liquid shall be deemed not to be trade effluent for the purposes of this Chapter.

(2) An order under subsection (1) above may so provide whether or not the liquid or other matter specified would otherwise have fallen within (or, as the case may be, outside) a proper construction of “trade effluent” as defined in section 141(1) below.

(3) An order under subsection (1) above may so provide, in relation to the liquid or other matter specified, either generally or in particular cases or classes of case or for particular purposes or as otherwise specified in the order.

(4) In this section, references to the discharge restrictions are references to—

(a) the restrictions imposed by paragraphs (a) and (b) of section 106(2) above; and

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- (b) the restrictions imposed by section 111 above so far as it relates to anything falling within paragraph (a) or (b) of subsection (1) of that section.
- (5) Where any provisions of this Chapter are to apply to a liquid or other matter by virtue of an order under subsection (1)(a) above, the order may provide for them so to apply subject to such modifications as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of this Chapter of the expression “trade premises” as may be so specified.
- (6) The Secretary of State may include in an order under subsection (1) above such provisions as appear to him expedient for modifying any enactment as that enactment applies in relation to the discharge into sewers of any liquid or other matter specified in the order.
- (7) Where the discharge restrictions do not apply to a liquid by virtue of an order under subsection (1)(b) above, subsections (3) to (8) of section 106 above and sections 108 and 109 above shall have effect in relation to communication with a sewer for the purpose of making any discharge of that liquid as they apply in relation to any other discharges which are authorised by subsection (1) of section 106 above.
- (8) The Secretary of State may include in an order under this section such other supplemental, incidental or transitional provision as appears to him to be expedient.
- (9) The power to make an order under this section shall be exercisable by statutory instrument, but such an instrument shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) In this section, references to a liquid are to a liquid either with or without particles of matter in suspension in the liquid.”
- (2) In section 94 of the WIA (general duty to provide sewerage system), in subsection (5), at the end there is added “; and, accordingly, section 139 below shall have effect for the purposes of this section as it has effect for the purposes of Chapter 3 of this Part.”.
- (3) In section 138 of the WIA (meaning of “special category effluent”), subsection (5) is omitted.
- (4) In section 141 of the WIA (interpretation of Chapter 3), in subsection (1), after “requires” there is inserted “ and subject to section 139 above ”.
- (5) In section 171 of the WIA (entry for sewerage purposes), in subsection (3), after “trade effluent” there is inserted “ or any other liquid or substance ”.

## **89 Trade effluent consents: conditions of consent**

- (1) In section 119 of the WIA (application for consent)—
- (a) after paragraph (a) of subsection (2) there is inserted—
- “(ab) the steps proposed to be taken, in relation to the discharge or by way of subjecting any substance likely to affect the

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description of matter discharged to treatment or any other process, for minimising—

- (i) the polluting effects of the discharge on any controlled waters; and
  - (ii) the impact of the discharge on sewerage services;”,
- (b) after subsection (2) there is inserted—

“(3) In this section “controlled waters” has the meaning given by section 104 of the Water Resources Act 1991.”

(2) In section 121 of the WIA (conditions of consent)—

(a) after paragraph (b) of subsection (1) there is inserted—

“(ba) the steps to be taken, in relation to the discharge or by way of subjecting any substance likely to affect the description of the matter discharged to treatment or any other process, for minimising—

- (i) the polluting effects of the discharge on any controlled waters; and
  - (ii) the impact of the discharge on sewerage services;”,
- (b) in subsection (6), at the end there is inserted “ and “controlled waters” has the meaning given by section 104 of the Water Resources Act 1991 ”.

VALID FROM 28/05/2004

*Water mains, etc*

**90 Water main requisitions: financial conditions**

(1) Section 42 of the WIA (financial conditions of compliance with water main requisition) is amended as follows.

(2) In subsection (2), for paragraph (a) there is substituted—

“(a) bind the person or persons mentioned in that subsection to pay to the undertaker either (at the election of such person or persons)—

- (i) in respect of each of the twelve years following the provision of the main, an amount not exceeding the relevant deficit (if any) for that year on that main; or
- (ii) following provision of the main, a single amount not exceeding the discounted aggregate deficit on that main; and”.

(3) In subsection (6), for the words from “shall be referred” to the end there is substituted “ may be referred to the Authority for determination under section 30A above by either party to the dispute. ”.

(4) For subsection (7) there is substituted—

“(7) In this section “relevant deficit” and “discounted aggregate deficit” have the meanings given by sections 43 and 43A below, respectively.”



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- (5) The amendments made by subsections (2) to (4) of this section do not apply in respect of water main requisitions (as defined in section 43(9) of the WIA) for which notice has been served under section 41(1) of that Act before the commencement of the subsection in question.

## 91 Water main requisitions: calculation of payments

- (1) In section 43 of the WIA (calculation of “relevant deficit” for the purposes of section 42)—

- (a) in paragraph (b) of subsection (4), after “providing” there is inserted “ or procuring the provision of ”,
- (b) for subsection (5) there is substituted—

“(5) In subsection (4) above the reference to an earlier main, in relation to the new main, is a reference to any water main which—

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

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

- (c) in subsection (8), in paragraph (b), for “that has already been provided” there is substituted “ in respect of which the conditions referred to in section 42(1) above have already been satisfied. ”

- (2) After section 43 of the WIA there is inserted—

### “43A Calculation of “discounted aggregate deficit” for the purposes of section 42

- (1) For the purposes of section 42 above the discounted aggregate deficit on a water main is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the provision of the main, in each case discounted in accordance with subsection (6) below.
- (2) The estimated relevant deficit for any year is the amount (if any) by which the estimated revenue in respect of the water main for that year would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.
- (3) Subsections (2) to (6), (8) and (9) of section 43 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a water main) shall apply for the purposes of this section as they apply for the purposes of that.
- (4) Any reference in this section to the estimated revenue in respect of a water main for any year—
- (a) in relation to premises expected to be connected with the main and supplied with water by a water undertaker, is a reference to so much of the aggregate of any charges expected to be payable to the undertaker for the provision of services in the course of that year as would represent charges—

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- (i) imposed by the undertaker in relation to those premises, and
  - (ii) reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main; and
- (b) in relation to premises expected to be connected with the main and supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges expected to be made during the course of that year as would be—
  - (i) payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and
  - (ii) reasonably attributable to the use of that main for the purpose of the supplier’s supplying water to those premises.
- (5) For the purpose of calculating estimated revenue under subsection (4) above, a thing is expected to be the case if, at the time the calculation is made, it is reasonably likely to occur.
- (6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.
- (7) A determination made by the Authority for the purposes of subsection (6) above—
  - (a) may be made in relation to the provision of a particular water main or in relation to the provision of water mains generally; and
  - (b) may be revoked at any time except in relation to a water main in respect of which the conditions referred to in section 42(1) above have already been satisfied.”
- (3) Section 44 of the WIA (determination of completion date and route for requisitioned main) is amended as follows—
  - (a) in subsection (1), for paragraph (b) there is substituted—
    - “(b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable (as the case may be)—
      - (i) service pipes to premises in that locality; or
      - (ii) a water main which is the subject of an agreement under section 51A below (“the self-laid main”),
 to connect with the main at the place or places determined under subsection (3) below.”,
  - (b) in paragraph (b) of subsection (2), for “an arbitrator” there is substituted “the Authority”,
  - (c) in paragraph (b) of subsection (3)—
    - (i) for “an arbitrator” there is substituted “the Authority”,
    - (ii) after “in question” there is inserted “, or (as the case may be) the self-laid main,”,
  - (d) for subsection (4) there is substituted—

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“(4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.”,

(e) in subsection (5)—

(i) the words “for any locality” are omitted,

(ii) for paragraph (b) there is substituted—

“(b) the day on which the place or places where (as the case may be)—

(i) service pipes to premises in the locality in question; or

(ii) the self-laid main,

will connect with the main are determined under subsection (3) above.”

(4) The amendments made by subsections (1) to (3) of this section do not apply in respect of water main requisitions (as defined in section 43(9) of the WIA) for which notice has been served under section 41(1) of that Act before commencement of the subsection in question.

## 92 Self-lay and adoption of water mains and service pipes

(1) After section 51 of the WIA there is inserted—

*“Adoption of water mains and service pipes*

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

(1) Subject to subsections (2) and (10) below, a water undertaker may agree with any person constructing or proposing to construct—

(a) any water main; or

(b) any service pipe,

that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay, to be vested in that undertaker.

(2) Subsection (1) above shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—

(a) nothing in this section shall prevent a water undertaker from agreeing apart from this section to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and

(b) such a declaration shall take effect as a declaration made under this Chapter.

(3) A person constructing or proposing to construct a water main or a service pipe to which subsection (1) above applies may make an application

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in writing to a water undertaker requesting the undertaker to make an agreement under this section.

(4) An application under subsection (3) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but subject to subsection (5) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(5) Where—

- (a) a person who has made an application to a water undertaker under subsection (3) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 51B below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(6) In deciding whether or on what terms to grant an application under subsection (3) above, a water undertaker shall have regard in particular to any effect or potential effect on the quality of water supplies and to any increased danger to life or health which it considers may result.

(7) The terms of an agreement under subsection (1) above relating to a water main may, in particular, include terms—

- (a) for the provision (at the expense of the person constructing or proposing to construct the water main) by—
  - (i) that person; or
  - (ii) the water undertaker,

of such associated infrastructure at or downstream of the point of connection with the undertaker's supply system as it is necessary to provide in consequence of incorporating the new water main into that system;

- (b) providing that, if the water main and the associated infrastructure are constructed in accordance with the terms of the agreement, the undertaker will, in addition to declaring the water main to be vested in it, declare the associated infrastructure to be so vested;
- (c) where the undertaker considers that the proposed main is, or is likely to be, needed for the provision of water supply services in addition to those for which the person is proposing to construct the main—
  - (i) requiring that person to construct the main in a manner differing, as regards material or size of pipes, depth or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it; and

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- (ii) providing for the repayment by the undertaker of any extra expense reasonably incurred by that person in complying with that requirement;
  - (d) for the connection of the new water main to the undertaker's existing supply system at the point or points specified in the agreement;
  - (e) for any service pipes which the person constructing or proposing to construct the new water main proposes to connect to that main to be constructed in accordance with the terms of the agreement and, subject to that, to be vested in the undertaker at the same time as the main.
- (8) The terms of an agreement under subsection (1) above relating to a service pipe may, in particular, include terms—
- (a) for the connection of the new service pipe to the undertaker's existing supply system at the point or points specified in the agreement;
  - (b) for such requirements of the kind referred to in section 47(2) above as may be applicable to be complied with before connection takes place.
- (9) An agreement made under this section by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.
- (10) A water undertaker shall not make an agreement under this section with respect to a water main or a service pipe situated within the area of another water undertaker, until either—
- (a) that other undertaker has consented in writing to the making of the agreement; or
  - (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

### **51B Appeals with respect to adoption**

- (1) Subject to section 51A(5) above, a person constructing or proposing to construct a water main or service pipe may appeal to the Authority where the water undertaker—
- (a) has refused an application under section 51A above;
  - (b) has offered to grant such an application on terms to which that person objects; or
  - (c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.
- (2) On the hearing of an appeal under this section, the Authority may—
- (a) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
  - (b) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application.

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- (3) Where the Authority makes an agreement under subsection (2)(b) above on behalf of a water undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as it considers appropriate for ensuring that the terms of the agreement are reasonable.
- (4) An agreement entered into on behalf of a water undertaker under subsection (2)(b) above shall be deemed, for the purposes of this Act, to have been entered into under section 51A above.
- (5) In deciding on an appeal under this section, the Authority may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it thinks fit, and any such provision as to costs or expenses shall be enforceable as if it were a judgment of a county court.

### **51C Financial conditions of compliance**

- (1) This section applies where an agreement is, or is to be, entered into under section 51A above in relation to a water main (“the adopted main”) by, or on behalf of, a water undertaker and a person constructing or proposing to construct that water main.
- (2) Where this section applies, the water undertaker may, as a condition of the undertaker’s compliance with the agreement, require that person to pay to it the costs mentioned in subsection (3) below.
- (3) The costs are those reasonably incurred by the undertaker in connection with the adopted main equivalent to the costs referred to in section 43(4)(a) and (b) above, as if references there (and in section 43(5)) to the provision of the new main were references to the incorporation of the adopted main into the undertaker’s supply system.
- (4) For the purposes of any payment required to be made by virtue of subsection (2) above, the water undertaker may require the person to provide such security as it may reasonably request, and the provisions of subsections (4) and (5) of section 42 above shall apply to any security so required as they apply to security required under that section.
- (5) Where this section applies, the water undertaker shall pay to the person referred to in subsection (1) above, upon declaring the water main to be vested in the undertaker, a sum equal to the discounted offset amount.
- (6) For the purposes of subsection (5) above, the discounted offset amount is the sum of the estimated offsets for each of the twelve years following the vesting in the undertaker of the water main, in each case discounted in accordance with subsection (9) below.
- (7) The estimated offset for any year is the lesser of—
  - (a) the estimated revenue (if any) in respect of the adopted main for that year; and
  - (b) the annual borrowing costs of a loan of the amount required for the provision of that main.

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- (8) The amounts referred to in paragraphs (a) and (b) of subsection (7) above shall be calculated in accordance with the provisions of subsections (3) to (5) of section 43A above as if the adopted main had been provided in pursuance of a water main requisition (as defined in section 43 above).
- (9) The estimated offset for a year shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.
- (10) A determination made by the Authority for the purposes of subsection (9) above—
  - (a) may be made in relation to a particular water main or in relation to water mains generally; and
  - (b) may be revoked at any time except in relation to an adopted main in respect of which the agreement referred to in subsection (1) above has already been made.
- (11) Any dispute between the water undertaker and the other person as to the payments required to be made or the security required to be provided by virtue of this section may be referred to the Authority for determination under section 30A above by either party to the dispute.

#### **51D Prohibition on connection without adoption**

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

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

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

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“(1A) In relation to service pipes which do not belong to or fall to be laid by the undertaker—

- (a) subsection (1) above is subject to section 51D(1) below; and
- (b) any such service pipe which is to vest in the undertaker by virtue of an agreement under section 51A below shall be connected to one of the undertaker’s water mains subject to and in accordance with the terms of that agreement.”

(3) In section 47 of the WIA (conditions of connection with water main), in subsection (2), for sub-paragraph (i) of paragraph (d) there is substituted—

“(i) subject to section 51D(1) below, so much of the service pipe to the relevant premises as does not belong to, vest in or fall to be laid by the undertaker; and”.

(4) After subsection (2) of section 179 of the WIA (vesting of works in undertaker) there is inserted—

“(2A) In addition to the water mains and service pipes which vest in a water undertaker by virtue of subsection (1) above, every water main and so much of each service pipe with respect to which a declaration of vesting made by a water undertaker under Chapter 2 of Part 3 of this Act takes effect shall also vest in that undertaker.”

(5) After subsection (1) of section 198 of the WIA (maps of waterworks) there is inserted—

“(1A) Subject to subsection (4) below, it shall also be the duty of every water undertaker to keep records of the location and (in the case of a water main) other relevant particulars of—

- (a) every water main in relation to which a declaration of vesting has been made by the undertaker under Chapter 2 of Part 3 of this Act but has not taken effect; and
- (b) every water main which is the subject of any agreement to make such a declaration which has been entered into by (or on behalf of) the undertaker.

(1B) For the purposes of this section the other relevant particulars of a water main are (in addition to its location) particulars of whether it is a water main in relation to which a declaration has been made under Chapter 2 of Part 3 of this Act or a water main which is the subject of an agreement to make such a declaration.”;

and, in subsection (4) of that section, after “subsection (1)” there is inserted “ or (1A) ”.

(6) In section 219 of the WIA (general interpretation), in subsection (1), in the definition of “service pipe”, after “below” there is inserted “ and to section 51E(3) above ”.

(7) The amendments of the WIA made by this section do not apply in respect of any water main or service pipe the construction of which was begun before the coming into force of this section.



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VALID FROM 28/05/2004

## *Sewers and drains*

### **93 Requisition and adoption of sewers**

(1) In section 99 of the WIA (financial conditions of compliance with sewer requisition)

(a) in subsection (2), for paragraph (a) there is substituted—

“(a) bind the person or persons mentioned in that subsection to pay to the undertaker either (at the election of such person or persons)—

(i) in respect of each of the twelve years following the provision of the sewer, an amount not exceeding the relevant deficit (if any) for that year on that sewer; or

(ii) following provision of the sewer, a single amount not exceeding the discounted aggregate deficit on that sewer; and”

(b) in subsection (6), for the words from “shall be referred” to the end there is substituted “ may be referred to the Authority for determination under section 30A above by either party to the dispute. ”

(c) for subsection (7) there is substituted—

“(7) In this section “relevant deficit” and “discounted aggregate deficit” have the meanings given by sections 100 and 100A below, respectively.”

(2) In section 100 of the WIA (calculation of “relevant deficit” for the purposes of section 99), in subsection (8), in paragraph (b), for “that has already been provided” there is substituted “ in respect of which the conditions referred to in section 99(1) above have already been satisfied. ”

(3) After section 100 of the WIA there is inserted—

#### **“100A Calculation of “discounted aggregate deficit” for the purposes of section 99**

(1) For the purposes of section 99 above the discounted aggregate deficit on a public sewer is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the provision of the sewer, in each case discounted in accordance with subsection (6) below.

(2) The estimated relevant deficit for any year is the amount (if any) by which the estimated drainage charges payable for the use during that year of that sewer would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.

(3) Subsections (2) to (6), (8) and (9) of section 100 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a public sewer) shall apply for the purposes of this section as they apply for the purposes of that section.

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- (4) Any reference in this section to the estimated drainage charges payable for the use during any year of any sewer is a reference to so much of the aggregate of any charges expected to be payable to the sewerage undertaker for the provision of services in the course of that year as would represent charges—
- (a) imposed by the undertaker in relation to such of the premises with which the sewer is expected to be connected as are premises where there are buildings; and
  - (b) reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purposes from those premises.
- (5) For the purposes of subsection (4) above, a thing is expected to be the case if, at the time the relevant calculation is made, it is reasonably likely to occur.
- (6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.
- (7) A determination made by the Authority for the purposes of subsection (6) above—
- (a) may be made in relation to the provision of a particular public sewer or in relation to the provision of public sewers generally; and
  - (b) may be revoked at any time except in relation to a public sewer in respect of which the conditions referred to in section 99(1) above have already been satisfied.”
- (4) The amendments made by subsections (1) to (3) of this section do not apply in respect of public sewer requisitions (as defined in section 100(9) of the WIA) for which notice has been served under section 98(1) of that Act before commencement of the subsection in question.

#### **94 Provision of public sewers otherwise than by requisition**

In section 101A of the WIA (which imposes a duty on sewerage undertakers to provide sewers for certain premises whose drainage gives rise to adverse environmental effects), in subsection (2)—

- (a) in paragraph (a), the words from “each of which” to the end of the paragraph are omitted, and
- (b) in paragraph (c), “in respect of which the condition specified in paragraph (a) above is satisfied” is omitted.

#### **95 Requisition of lateral drains**

- (1) Section 98 of the WIA (duty to comply with sewer requisition) is amended as provided in subsections (2) to (5).
- (2) After subsection (1) there is inserted—
 

“(1A) It shall be the duty of a sewerage undertaker (in accordance with section 101 below) to provide a lateral drain to communicate with a public sewer and to be used for the drainage for domestic purposes of premises in its area if—

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- (a) the undertaker is required to provide the lateral drain by a notice served on the undertaker by one or more of the persons who under subsection (2A) below are entitled to require the provision of the lateral drain;
  - (b) the premises the drainage of which would be by means of that lateral drain are—
    - (i) premises on which there are buildings; or
    - (ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and
  - (c) the conditions specified in section 99 below are satisfied in relation to that requirement.”
- (3) After subsection (2) there is inserted—
- “(2A) Each of the following persons shall be entitled to require the provision of a lateral drain, that is to say—
- (a) the owner of the premises the drainage of which would be by means of that lateral drain;
  - (b) the occupier of those premises;
  - (c) any local authority within whose area those premises are situated;
  - (d) where those premises are situated in a new town, within the meaning of the New Towns Act 1981—
    - (i) the Commission for the New Towns; and
    - (ii) the development corporation for the new town; and
  - (e) where those premises are situated within an area designated as an urban development area under Part 16 of the Local Government, Planning and Land Act 1980, the urban development corporation.”
- (4) In subsection (3)—
- (a) after “public sewer” there is inserted “ or, as the case may be, a lateral drain ”,
  - (b) after “of the sewer” there is inserted “ or lateral drain ”.
- (5) In subsection (5)—
- (a) the words “in a particular locality” are omitted,
  - (b) in paragraph (a), for “premises in that locality” there is substituted “ those premises ”,
  - (c) in paragraph (b), for “premises in the locality” there is substituted “ those premises ”.
- (6) In section 99 of the WIA (financial conditions of compliance)—
- (a) in subsection (1)—
    - (i) after “98(1)(c)” there is inserted “ or 98(1A)(c) ”,
    - (ii) after “sewer”, in both places, there is inserted “ or (as the case may be) lateral drain ”,
    - (iii) in paragraph (a), after “subsection (2)” there is inserted “ or, as the case may be, subsection (2A) ”,
  - (b) after subsection (2) there is inserted—

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“(2A) The undertakings which a sewerage undertaker may require for the purposes of subsection (1) above in respect of any lateral drain are undertakings which—

- (a) bind the person or persons mentioned in that subsection to pay to the undertaker, following provision of the lateral drain, on such terms as may be specified in the undertaking, an amount not exceeding the costs reasonably incurred in or in connection with the provision of the lateral drain; and
  - (b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability apportioned in such manner as they may agree.”,
- (c) for subsection (3) there is substituted—

“(3) For the purposes of subsection (1)(b) above a person may be required to secure his undertakings in relation to the provision of a public sewer or, as the case may be, a lateral drain if—

- (a) it was by virtue of section 98(2)(a) or (b) or (as the case may be) section 98(2A)(a) or (b) above that he required, or joined in requiring, the provision of the sewer or drain; and
  - (b) he is not a public authority.”,
- (d) for paragraph (a) of subsection (5) there is substituted—

“(a) may be given or made in relation to the provision of a particular public sewer or (as the case may be) lateral drain, in relation to the provision of sewers or lateral drains of a particular description or in relation to the provision of public sewers or lateral drains generally; and”.

- (7) For section 101 of the WIA (determination of completion date and route for requisitioned sewer) there is substituted—

**“101 Determination of completion date and route for requisitioned sewer or lateral drain**

- (1) A sewerage undertaker shall not be in breach of a duty imposed by section 98 above in relation to any locality or (in the case of a lateral drain) in relation to any premises unless—

- (a) the period of six months beginning with the relevant day has expired; and
- (b) the sewerage undertaker has not, before the end of that period, so laid (as the case may be)—
  - (i) the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in the locality to communicate with the public sewer; or
  - (ii) the lateral drain to be provided as to enable the drain to be used for the drainage of premises to communicate with a public sewer vested in that undertaker,
 at the place or places determined under subsection (3) below.

- (2) The period mentioned in subsection (1)(a) above may be extended—

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- (a) by agreement between the undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
  - (b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under subsection (4) below.
- (3) The places mentioned in subsection (1)(b) above shall be—
- (a) such place or places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or
  - (b) in default of agreement, such place or places as are determined by the Authority on a reference under subsection (4) below to be the place or places at which it is reasonable, in all the circumstances—
    - (i) in relation to the provision of a public sewer, for drains or private sewers to be used for the drainage of premises in the locality in question to communicate with the public sewer; or
    - (ii) in relation to the provision of a lateral drain—
      - (a) for the lateral drain to communicate with a public sewer vested in the undertaker; and
      - (b) for the remainder of the drain of which the lateral drain forms part to connect with the lateral drain.
- (4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.
- (5) In this section “relevant day”, in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following—
- (a) the day on which the conditions specified in section 99 above are satisfied in relation to the requirement; and
  - (b) the day on which the place or places where (as the case may be)—
    - (i) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer; or
    - (ii) the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain, are determined under subsection (3) above.”
- (8) The substitution, by subsection (7), of section 101 of the WIA does not apply in respect of requirements notified under section 98 of the WIA before subsection (7) comes into force.
- (9) After section 101A of the WIA there is inserted—

**“101B Power to construct lateral drains following provision of public sewer**

- (1) Where a sewerage undertaker provides a public sewer pursuant to a duty to do so imposed on it by section 98 or section 101A above, the undertaker may, at the request of the person mentioned in subsection (2) below, also

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provide at the same time one or more lateral drains to be used for the drainage for domestic purposes of premises in its area and to communicate with that sewer.

- (2) A request under subsection (1) above may be made—
- (a) in the case of a public sewer to be provided under section 98 above, by the person who requires the provision of the sewer under that section; and
  - (b) in the case of a public sewer to be provided under section 101A above, by the owner or occupier of any premises in respect of which the duty to provide the sewer arises under that section (but any request may only be for the provision of a lateral drain to his premises).
- (3) The person making a request under this section shall pay to the water undertaker, following provision of the lateral drain, the costs reasonably incurred in or in connection with providing that drain.
- (4) Any dispute between the sewerage undertaker and the person making a request under this section as to—
- (a) whether a lateral drain should be provided pursuant to the request; or
  - (b) the costs reasonably incurred in the provision of a lateral drain,
- may be referred to the Authority for determination under section 30A above by either party to the dispute.
- (5) Any lateral drain provided pursuant to a request made to a sewerage undertaker under this section shall belong to the undertaker.”
- (10) Section 101B of the WIA (as inserted by subsection (9)) does not apply in respect of a public sewer to be provided pursuant to—
- (a) a requirement notified under section 98 of that Act before the coming into force of subsection (9), or
  - (b) a duty under section 101A of that Act which the sewerage undertaker had accepted, or the Environment Agency had determined, it was under before the coming into force of subsection (9).

## **96 Adoption of lateral drains**

- (1) In section 102 of the WIA (adoption of sewers and disposal works)—
- (a) in subsection (1), the word “or” at the end of paragraph (a) is omitted and after that paragraph there is inserted—
    - “(aa) any lateral drain which communicates or is to communicate with a public sewer which—
      - (i) is so situated or serves the whole or any part of that area; and
      - (ii) is vested in that undertaker; or”
  - (b) in subsection (2), after “sewer” in both places there is inserted “ , lateral drain ”,
  - (c) in subsection (4), in paragraph (a), after “sewer” there is inserted “ , lateral drain ”,
  - (d) in subsection (5)—
    - (i) in paragraph (b), after “sewer” there is inserted “ or lateral drain ”,

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- (ii) in paragraph (c), after “sewer” there is inserted “ or lateral drain ”,
  - (iii) in paragraph (d), after “sewer” there is inserted “ , lateral drain ”,
  - (e) in subsection (6), after “sewer” in both places there is inserted “ or lateral drain ”.
- (2) In section 103 of the WIA (adoption of cross-border sewers etc)—
- (a) in subsection (1), the word “or” at the end of paragraph (a) is omitted and after that paragraph there is inserted—
    - “(aa) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or”,
  - (b) for subsection (3) there is substituted—
    - “(3) Where—
      - (a) a sewer (or part of a sewer) or a lateral drain is vested, or any sewage disposal works are vested, in a relevant body; and
      - (b) in the case of a sewer, part of a sewer, lateral drain or works vested in railway undertakers or dock undertakers, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to those undertakers and held or used by them for the purposes of their undertaking, a sewerage undertaker shall not make a declaration under section 102 above with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.”,
  - (c) in subsection (4), in paragraph (a), after “sewer” there is inserted “ or lateral drain ”.
- (3) Sections 102 and 103 of the WIA (adoption of sewers etc), as amended by subsections (1) and (2) above, do not apply to any lateral drains (as mentioned in those sections) the construction of which was completed before the coming into force of subsections (1) and (2) above.
- (4) Section 104 of the WIA (agreements to adopt sewer etc at future date) is amended as follows—
- (a) for subsection (1) there is substituted—
    - “(1) Subject to subsection (7) and section 146(3) below, a sewerage undertaker may agree with—
      - (a) any person constructing or proposing to construct—
        - (i) any sewer;
        - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
        - (iii) any sewage disposal works; or
      - (b) any person at whose expense the undertaker is, by virtue of an agreement under section 160 below, to carry out work in connection with the construction of such a drain or sewer, that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the

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undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.”,

- (b) in subsection (2), for “constructing or proposing to construct a sewer” there is substituted “ mentioned in paragraph (a) or (b) of subsection (1) above ”,
- (c) in subsection (5), after “sewer” there is inserted “ , lateral drain ”,
- (d) subsection (6) is omitted,
- (e) after subsection (6) there is inserted—

“(6A) Without limiting the terms which may be included in an agreement under this section, the terms of an agreement which relates to a drain may include in particular—

- (a) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;
- (b) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;
- (c) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and
- (d) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.”,

- (f) for subsection (7) there is substituted—

“(7) A sewerage undertaker shall not make an agreement under this section with respect to—

- (a) a sewer, drain or sewage disposal works situated within the area of another sewerage undertaker; or
- (b) a drain which is intended to communicate with a sewer which—
  - (i) is so situated; or
  - (ii) is vested in another sewerage undertaker,
 until one of the conditions mentioned in subsection (8) below is satisfied.

(8) The conditions are—

- (a) that other undertaker has consented to the making of the agreement; or
- (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.”

(5) In section 105 of the WIA (appeals with respect to adoption)—

- (a) in subsection (1), after “sewer” there is inserted “ , lateral drain ”,



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- (b) in subsection (3), after “sewer” there is inserted “, lateral drain”.

## 97 Requisitioning and adoption of lateral drains: supplementary

- (1) The WIA is amended as follows.
- (2) In section 36 (interpretation of Part 2 of the WIA)—
- (a) in subsection (3)(b)(i), after “sewer” there is inserted “ or drain ”,
- (b) for the definition of “relevant sewer” in subsection (4) there is substituted—
- ““relevant sewer or drain”, in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following, that is to say—
- (a) a public sewer or lateral drain vested in that company;
- (b) a sewer or lateral drain in relation to which that company has made a declaration of vesting under section 102 below which has not yet taken effect;
- (c) a sewer or lateral drain in relation to which that company has entered into an agreement under section 104 below.”
- (3) In section 94 (general duty to provide sewerage system), in paragraph (a) of subsection (1), after “those sewers” there is inserted “ and any lateral drains which belong to or vest in the undertaker ”.
- (4) In section 158 (powers to lay pipes in streets), for paragraph (b) of subsection (7) there is substituted—
- “(b) in relation to a sewerage undertaker, as references to—
- (i) any sewer or disposal main; or
- (ii) in relation to the exercise of a power to lay a pipe under paragraph (a) of subsection (1) above or a power related to that power under paragraph (c) of that subsection, any lateral drain which the undertaker is to lay by virtue of section 98 or 101B above; or
- (iii) in relation to the exercise of any other power under subsection (1) above, any lateral drain which belongs to or is vested for the time being in the undertaker.”
- (5) In section 159 (power to lay pipes in other land), in subsection (7), at the end there is added “ (reading references there to subsection (1) as references to subsection (1) of this section). ”.
- (6) In section 171 (entry for sewerage purposes), in subsection (3), for “a private drain or sewer” there is substituted “ a drain or private sewer ”.
- (7) In section 179 (vesting of works in undertaker)—
- (a) in paragraph (a) of subsection (2), after “sewer” there is inserted “, lateral drain”;
- (b) in subsection (7), in paragraph (b) of the definition of “relevant pipe”, after “sewer” there is inserted “, lateral drain”.
- (8) In section 199 (sewer maps), in subsection (1)—
- (a) in paragraph (a), after “sewer” there is inserted “, lateral drain”;
- (b) in paragraph (b), after “sewer” there is inserted “ or lateral drain ”.

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- (9) In section 219 (general interpretation)—
- (a) in subsection (1), after the definition of “inland waters” there is inserted—
- ““lateral drain” means—
- (a) that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate; or
- (b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under section 102 above or in an agreement made under section 104 above;”
- (b) in subsection (3), after “sewer,” there is inserted “ lateral drain, ”.
- (10) In Schedule 12 (compensation etc in respect of pipe-laying and other works powers), in sub-paragraph (5) of paragraph 4, after “sewer” there is inserted “ , lateral drain ”.

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**98 Schemes for the adoption of sewers, lateral drains and sewage disposal works**

After section 105 of the WIA there is inserted—

**“105A Schemes for the adoption of sewers, lateral drains and sewage disposal works**

- (1) The Secretary of State may by regulations provide for him to make schemes for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works of the descriptions set out in paragraphs (a), (aa) and (b) of section 102(1) above.
- (2) The regulations may require sewerage undertakers to prepare draft schemes and to submit them to the Secretary of State.
- (3) Each scheme shall relate to—
- (a) the area of a sewerage undertaker, or part or parts of it; or
- (b) the areas of more than one sewerage undertaker, or part or parts of them.
- (4) It shall be the duty of a sewerage undertaker, in specified circumstances, to exercise its powers under section 102 above with a view to making the declaration referred to in subsection (1) of that section in relation to sewers, lateral drains or sewage disposal works which—
- (a) fall within the area to which a scheme relates; and
- (b) satisfy specified criteria.
- (5) The circumstances and the criteria shall each be—
- (a) specified in the regulations; or
- (b) determined in accordance with the regulations and specified in the scheme.

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- (6) In relation to the exercise of those powers pursuant to that duty—
- (a) section 102 above shall have effect—
    - (i) with the omission of subsections (2), (5) and (7);
    - (ii) as if in subsection (1) the words “sections 103, 105 and 146(3) below” read “section 105B below”;
    - (iii) with the omission of the words “or application” in subsection (3);
    - (iv) as if for subsection (4)(a) there were substituted—
      - “(a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question unless, after diligent enquiry, he or they cannot be traced;
      - (aa) shall publish notice of its proposal in the prescribed manner; and”;
    - (v) as if in subsection (4)(b) “two months” read “two months or, if longer, the period specified by virtue of section 105B(5) below” and “section 105 below” read “section 105B(4) or (5) below, or”; and
    - (vi) as if section 96(3) of the Water Act 2003 did not apply;
  - (b) sections 103 and 105 above shall not apply; and
  - (c) if the regulations so provide, section 146(3) below shall not apply in circumstances or cases specified in the regulations.
- (7) A duty imposed on a sewerage undertaker under subsection (4) above shall be enforceable by the Secretary of State under section 18 above.
- (8) A statutory instrument containing regulations under subsection (1) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

#### **105B Adoption schemes: appeals**

- (1) Any person falling within subsection (2) below may appeal to the Authority if he is aggrieved by—
  - (a) the proposal of a sewerage undertaker to make a declaration under section 102 above in relation to a sewer, lateral drain or sewage disposal works, pursuant to the undertaker’s duty to do so under section 105A(4) above (the “relevant duty”); or
  - (b) the failure of a sewerage undertaker to make such a proposal pursuant to that duty.
- (2) The persons referred to are—
  - (a) an owner of a sewer, lateral drain or sewage disposal works;
  - (b) any other person affected by the proposal, or the failure, in question.
- (3) The grounds upon which a person may appeal are—
  - (a) in a subsection (1)(a) case, that the relevant duty is not owed in relation to the sewer, lateral drain or sewage disposal works, or

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- that the making of the proposed declaration would be seriously detrimental to him;
- (b) in a subsection (1)(b) case, that the relevant duty is owed in relation to the sewer, lateral drain or sewage disposal works; or
  - (c) any other prescribed ground.
- (4) An appeal under subsection (1)(a) above shall be made within two months after notice of the proposal is—
- (a) served on the owner of the sewer, lateral drain or sewage disposal works; or
  - (b) published in accordance with section 102(4) above as modified by section 105A(6) above,
- (or, if both occur, within two months after whichever is the later).
- (5) An appeal under subsection (1)(b) above shall be made within such period as is specified in the scheme (not being less than two months).
- (6) On the hearing of an appeal under subsection (1) above, the Authority may—
- (a) in a subsection (1)(a) case, allow or disallow the proposal of the sewerage undertaker; or
  - (b) in a subsection (1)(b) case, determine that the undertaker was not under the relevant duty in relation to the sewer, lateral drain or sewage disposal works in question,
- or, in either case, make any declaration that the sewerage undertaker might have made, unless the proposal is disallowed.
- (7) If, in a subsection (1)(a) case, the Authority finds that the making of the proposed declaration would be seriously detrimental to the appellant, it shall disregard any duty on the part of the sewerage undertaker to make the proposal for the purpose of determining whether to allow or disallow the proposal.
- (8) If, in a subsection (1)(a) case, the Authority disallows the proposal of the sewerage undertaker, the scheme pursuant to which it was made shall have effect as if there were no duty under section 105A(4) above on the sewerage undertaker in relation to the sewer, lateral drain or sewage disposal works in question.
- (9) Where the Authority makes a declaration under subsection (6) above, it may, if it thinks fit—
- (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
  - (b) direct that its declaration shall not take effect unless any conditions so specified are accepted.
- (10) A declaration made under subsection (6) above shall have the same effect as if it had been made by the undertaker.
- (11) The Secretary of State may by regulations make further provision in connection with appeals under this section.
- (12) The regulations may, in particular, require the Authority to have regard to prescribed matters when determining an appeal under this section.

*Status: Point in time view as at 01/04/2004. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Water Act 2003, Part 3 is up to date with all changes known to be in force on or before 07 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### **105C Adoption schemes: supplementary**

- (1) The Secretary of State may vary any scheme, or revoke it.
- (2) Before making regulations or any scheme under section 105A above, and before amending or revoking the regulations or varying or revoking a scheme, the Secretary of State shall consult—
  - (a) each sewerage undertaker which would be affected;
  - (b) the Authority;
  - (c) the Council;
  - (d) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State shall publish each scheme he makes, and any such scheme as varied, in the way he considers best for the purpose of bringing it to the attention of those likely to be affected by it.”

### **99 Communication with public sewers**

- (1) Section 106 of the WIA (right to communicate with public sewers) is amended as follows.
- (2) After subsection (1) there is inserted—

“(1A) In this section, and in sections 107 to 109, 111, 113 to 116, 118, 119, 124, 127, 139 and 146 below—

  - (a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and
  - (b) for the purposes of paragraph (a) above—
    - (i) a “public lateral drain” is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under section 102 above or under an agreement made under section 104 above; and
    - (ii) “sewer standards” means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.”
- (3) In subsection (4), for “is such that the making of the communication would be prejudicial to the undertaker’s sewerage system” there is substituted—
  - “(a) does not satisfy the standards reasonably required by the undertaker; or
  - (b) is such that the making of the communication would be prejudicial to the undertaker’s sewerage system.”
- (4) After subsection (5) there is inserted—

“(5A) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under section 102 above.”

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(5) In subsection (6)—

- (a) for “(3) to (5)” there is substituted “ (3) to (5A) ”,
- (b) in paragraph (b), after “(5)” there is inserted “ or (5A) ”,
- (c) at the end there is added “ (and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above). ”

(6) In section 219 of the WIA (general interpretation), in the definition of “public sewer”, after “means” there is inserted “ (subject to section 106(1A) above) ”.

**Status:**

Point in time view as at 01/04/2004. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

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