



# Water Act 2003

## 2003 CHAPTER 37

### PART 3

#### MISCELLANEOUS

#### *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.
- (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

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- (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 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.

### **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—

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- (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.
- (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—

**“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

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(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 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—
  - (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—
 

“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).