

*These notes refer to the Water Act 2003 (c.37)
which received Royal Assent on 20th November 2003*

WATER ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes refer to the Water Act, which received Royal Assent on 20th November 2003. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So, where a section or part of a section does not seem to require any explanation or comment, none is given.
3. With certain exceptions, the Act extends only to England and Wales.
4. The Act relates to matters within the responsibilities of both the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Health, and where functions have been devolved, the National Assembly for Wales. In practice, the functions conferred on the Secretary of State (other than where devolved) will be exercised by the Secretary of State for Environment, Food and Rural Affairs or the Secretary of State for Health to reflect their respective ministerial portfolios.

TERRITORIAL APPLICATION: WALES

5. Various functions of the Secretary of State introduced or amended by the Act are devolved to be exercised by the National Assembly for Wales. This is achieved by section 100 of the Act amending the National Assembly for Wales (Transfer of Functions) Order 1999 (“The Transfer of Functions Order”) to take into account the new provisions introduced by the Act.
6. If a function is devolved by the way of the Transfer of Functions Order, the section of the Act only makes reference to the Secretary of State, and the section is to be interpreted as referring to the National Assembly for Wales in the manner or circumstances set out in the Transfer of Functions Order. Most of the provisions of the Act amend other legislation, such as the Reservoirs Act 1975, the Water Industry Act 1991 or the Water Resources Act 1991, and the Transfer of Functions Order makes the division of functions in different ways for different Acts. The relevant provision for devolution purposes will be the amended section of the relevant Act.
7. One of the reasons for devolution being put into effect in different ways depending in different Acts is that the areas of appointment of water and sewerage undertakers do not follow the geographical boundary of England and Wales. Accordingly, when considering the functions of water and sewerage undertakers, the jurisdiction of the Secretary of State and the National Assembly for Wales is generally determined by the undertakers’ areas of appointment, rather than the national boundary.

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8. The Act has been drafted in consultation and agreement with the Welsh Assembly Government and the Wales Office so that it applies to both England and Wales.

SUMMARY

9. The four broad aims of the Act are:

- the sustainable use of water resources;
- strengthening the voice of consumers;
- a measured increase in competition; and
- the promotion of water conservation.

10. The Government's initiative to promote sustainable use of water resources was launched by the Deputy Prime Minister at the Water Summit in May 1997 with a 10 point action plan. That plan included a review of the abstraction licensing system. Following consultation, the Government's decisions on abstraction licensing were published in *Taking Water Responsibly* in March 1999. This Act implements those changes to the current regime for water resources management that require legislative change. The need for the Better Regulation measures was also indicated before publication of the Act in the White Paper *A Fair Deal for Consumers – Modernising the Framework for Utility Regulation*, published in July 1998. The Government announced in March 2001 that it would increase opportunities for competition in water services, and this Act implements changes to achieve that.

11. In November 2000, the Government consulted on the draft Water Bill, publishing its response in July 2002. A three-month consultation was undertaken on the competition aspects of the Bill in summer 2002. Copies of these documents are available on the DEFRA website (www.defra.gov.uk/environment/water/legislation).

12. The main provisions of the Act are set out below.

13. The Act amends the Water Resources Act 1991 to improve long-term water resource management by:

- creating two new forms of abstraction licence – the transfer licence and the temporary licence;
- widening the control over impoundments so that licences are required for the whole duration of impoundment works;
- replacing licensing exemptions based on water use with a new exemption threshold of less than 20 cubic metres of water per day;
- ending the current exemption for irrigation (other than spray irrigation) and dewatering from the abstraction licensing regime;
- requiring all new abstraction licences to be time-limited;
- empowering the Environment Agency to revoke or vary an abstraction licence without compensation if it has not been used for four years; and

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- removing the entitlement to compensation if the Secretary of State (or the Assembly) directs that a licence without a time limit should be curtailed, on or after 15 July 2012, on the grounds of serious environmental damage.
14. It also amends the Water Industry Act 1991 so that water companies:
- are given a duty to prepare and publicise drought plans;
 - are placed under a duty to agree and publicise water resource management plans; and
 - are placed under an enforceable duty to further water conservation.
15. The Act introduces provisions for the better operation and regulation of the water industry by amending the Water Industry Act 1991 to:
- replace the Director General of Water Services with a Regulatory Authority;
 - set up a new independent Consumer Council for Water to replace the Customer Service Committees and the Ofwat National Consumer Council (known as WaterVoice);
 - require the Authority and the Council to consult on and publish forward work programmes and annual reports;
 - give both the Authority and Council a new duty to contribute to sustainable development; and
 - give the Authority a duty to further the consumer objective wherever appropriate, through promoting effective competition.
16. The Act includes provisions which aim to increase the opportunities for competition in the supply of water services, by:
- setting up a system to license new entrants to supply water to large commercial and industrial customers based on a water consumption threshold; and
 - providing the Authority with new regulatory powers to administer the competition framework.
17. The Act also amends the Water Industry Act 1991 to include a new statutory obligation for water companies to accede to requests from Strategic Health Authorities (in relation to England) and the Assembly (in relation to Wales) to enter into arrangements to fluoridate water supplies. This transfers responsibility for the decision to fluoridate from the undertaker to the Strategic Health Authority and the Assembly, in consultation with local communities.
18. To further the principles of sustainable use of water resources, better regulation of the water industry, competition and water conservation, the Act contains a number of miscellaneous provisions.
19. To further water conservation the Act contains new provisions to:
- place a duty on the Secretary of State and the National Assembly of Wales to take appropriate steps to encourage water conservation; and

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- place a duty on public authorities to take into account the desirability of conserving water supplies to premises.
20. The Act amends the Water Industry Act 1991 to:
- give the Secretary of State or the Assembly powers to develop schemes requiring the adoption of private sewers by sewerage undertakers;
 - require Fire Authorities or owners of commercial or industrial premises to pay for replacement fire hydrants removed during water mains renewal or refurbishment work;
 - allow developers to enter into an agreement with water undertakers to lay water mains and communication pipes in accordance with standards set by the undertaker;
 - extend existing provisions to enable undertakers to adopt new lateral drains upon construction; and
 - give the Secretary of State or the Assembly the power to make orders to apply or disapply the trade effluent consenting regime in certain cases.
21. It enhances reservoir safety by amending the Reservoirs Act 1975 to:
- transfer enforcement powers from local authorities to the Environment Agency in England and Wales; and
 - empower the Secretary of State or the Assembly to direct owners of large raised reservoirs to prepare and maintain flood plans.
22. The Act includes various amendments to facilitate streamline arrangements for flood defence organisation and funding by:
- including powers to revoke local flood defence schemes and allow the creation of additional regional flood defence committees;
 - repealing section 147 to 149 of the Water Resources Act to enable Ministers to make block grants to the Environment Agency for flood defence works and flood warning schemes;
 - reinstating the power of the internal drainage boards to borrow to fund contributions to the Environment Agency; and
 - enabling the National Assembly for Wales to make provisions regarding the membership of Welsh regional flood defence committees.
23. The Act provides new powers under the Coal Industry Act 1994 for the Coal Authority to take action to prevent and clean up mine water pollution from abandoned coal mines.

OVERVIEW OF THE ACT

24. With certain exceptions the Act extends only to England and Wales.
25. The Act is divided into 4 parts and has 105 sections and 9 schedules.

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26. Part 1 and elements of Part 3: provide the Environment Agency with additional tools for managing water resources and stronger powers to take action against abstractions causing environmental damage. They introduce provisions to increase the scope and public availability of information on water resources which are intended to enable abstractors to plan ahead in an environmentally responsible manner. They also make provision to increase the flexibility, accountability and administrative efficiency of the abstraction and impounding licensing system, with the intended result of increasing the ease of access to sustainable water resources.

27. Part 2: establishes a regulatory Board to replace the existing individual Director General of Water Services along with a new independent Consumer Council for Water to replace the Customer Service Committees. It also introduces other provisions intended to improve the regulatory regime and to extend the opportunities for competition in the water industry, by allowing new entrants to supply non-household customers who use large volumes of water.

28. Part 3: see above, with Part 1. This Part introduces a range of miscellaneous provisions including a duty on the Secretary of State and the National Assembly for Wales to encourage water conservation. Part 3 also includes powers for the Secretary of State to require sewerage undertakers to adopt private sewers.

29. Part 4: contains a number of supplementary provisions, such as commencement, short title and territorial extent.

COMMENTARY ON SECTIONS

30. The commentary on sections is set out by Part and, where appropriate, with the Schedule commentary alongside the section to which it relates.

31. In these Notes, the following abbreviations are used:

Water Services Regulation Authority : the Authority

Consumer Council for Water : Council or the CCW

Department of Trade and Industry : DTI

Director General of Water Services : Director

Drinking Water Inspectorate : DWI

Environment Agency : EA or the Agency

National Assembly for Wales : the Assembly

Water Industry Act 1991 : WIA

Water Resources Act 1991 : WRA

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PART 1: ABSTRACTION AND IMPOUNDING

Sections 1 to 10 Restrictions on abstraction and impounding

32. *Section 1: Licences to abstract water.*

This provides that abstraction licences will be of one of three types: a “full licence”, a “transfer licence” or a “temporary licence”.

33. One of these three forms of licence is required in order for a person to abstract any quantity of water which is above the licensing threshold (see section 6) and which is not otherwise exempt.

34. A “temporary licence” is required for any abstraction from a source of supply lasting less than 28 days.

35. A “transfer licence” is available for abstraction of water for 28 days or more for transfer from one source of supply to another without intervening use – for example, from one watercourse to another for the purposes of navigation. A transfer licence is also available for transfers between two points in the same source of supply where the abstraction is related to dewatering of works such as within a quarry. But it is possible to apply for a full licence if the applicant wants full protection from derogation for his transfer abstraction (see section 16).

36. A “full licence” is required for any other abstraction for 28 days or more. All current abstraction licences are of this type, by virtue of the provisions of section 102(1), even though some relate to abstractions that would require only a “transfer licence”. There is no need for existing licences to be converted unless the holder wishes to do it.

37. Provisions in this section are devolved to the Assembly.

38. *Section 2: Restrictions on impounding.*

The current restriction on impounding of water makes it an offence to begin to construct or alter an impounding works unless an impounding licence has been obtained. This section amends the current restriction on impounding in order to impose controls throughout the lifetime of new impounding works. Impounding licences (whether issued before or after the coming into force of this section) will remain in force for the lifetime of the works, allowing the Agency to attach or modify conditions to the licence to ensure that impounding works do not cause damage to the environment.

39. Provisions in this section are devolved to the Assembly.

40. *Sections 3 and 4: Existing impounding works.*

The new restriction on impounding introduced by section 2 does not apply retrospectively. However, there are impounding works that are unlicensed, either because their construction pre-dated the licensing regime or a licence has been revoked and some of these works are, or in the future may, cause environmental problems that cannot be addressed by the Agency under its current powers. Section 3 provides the EA with a new power to serve notice to require that an impounding licence is obtained and failure to comply with such a notice would be an offence.

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Section 4 provides the EA with a power to serve a works notice on the relevant person (normally the owner) to carry out remedial works on an existing impoundment that is causing environmental damage. Failure to comply with the notice is an offence.

41. Provisions in these sections are devolved to the Assembly.

42. ***Section 5: Rights of navigation, harbour and conservancy authorities.***

Under the current regime, all transfers of water from one area of inland water to another by navigation, harbour and conservancy authorities in the exercise of their functions as such are exempt from licence control. The effect of this section, taken with section 1, is to limit that exemption and to require the licensing of transfers of water from any source of supply to a water system operated by these authorities. While a transfer licence will suffice, those authorities may also apply for a full licence if they wish (see section 16). Transfers wholly within water systems operated by those authorities (for example, transfers from canal pounds to canal locks) do not require a licence. Neither do transfers between any such system and other inland waters which are connected only to that system (for example, ditches draining only to canals, or reservoirs capable of discharging only to canals). Where a transfer is made to another source of supply from which it is subsequently abstracted, the transfer will be licensable. Construction or alteration of impounding works by those authorities will remain exempt from licensing if the works do not have any effect beyond the authority's water system.

43. Provisions in this section are devolved to the Assembly.

44. ***Section 6: Rights to abstract small quantities.***

This section sets a quantity of 20 cubic metres in any period of 24 hours as the normal threshold above which an abstraction licence is required, irrespective of the source of supply or the purpose of the abstraction (unless it is otherwise exempt). This replaces the present, more complex exemptions framework for small abstractions, under which more than 20,000 abstractions of less than that quantity require licences. The section also provides that where a licence exists, the small quantity exemption does not apply in addition to the licensed quantity for abstractions for the same purpose, but it can be used in addition to a licensed abstraction for a different purpose.

45. The Agency may apply (or can be directed to apply) to the Secretary of State for an Order setting a different threshold, which may be greater or less than the normal figure in specified areas, inland waters or underground strata. If the threshold is reduced and a previously exempt abstractor is unable to obtain a licence to abstract the volume he had previously abstracted, then compensation may become payable for loss or damage caused to that abstractor.

46. Provisions in this section are devolved to the Assembly.

47. ***Section 7: Rights to abstract for drainage purposes, etc.***

Abstractions for dewatering mines, quarries or engineering excavations will generally require a licence (usually a temporary or transfer licence – see section 1). But this section also recognises that such abstractions may be required as an emergency measure and it therefore allows them to take place without a licence provided that the

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EA is notified within five days of their commencement. The Agency may determine that the abstraction is not necessary by reason of an emergency and is able to require a licence application to be made in the normal way. The Agency may also serve notice on the operator that it considers that what started out as an emergency abstraction has ceased to be one.

48. This section also removes two activities from the definition of “land drainage”, and thus from the exemption from licensing. These activities become subject to licensing control. They are: warping (which is the abstraction of water which contains silt onto agricultural land so that the silt can deposit and act as a fertiliser) and irrigation. At present, of those abstractions made for irrigation it is only those that are made for spray irrigation that require abstraction licensing. The growing use of trickle irrigation and the use of land drainage systems in reverse to maintain field water levels and for warping prompts the proposed change. Land drainage i.e. removal of flood water, remains exempt from abstraction licensing. The many minor transfers of water within an Internal Drainage Board district are exempt from licence control, but initial transfers into a Board’s district will be licensable.

49. Provisions in this section are devolved to the Assembly.

50. ***Section 8: Amendments relating to section 7.***

The amendments provided by this section are consequential on section 7. They move to sections 199 and 199A the provisions of sections 30 and 31 of the WRA, which require an operator to give prior notice to the EA of mining operations affecting water resources. The section provides that the Secretary of State may delegate decisions on appeals against notices to a third party. The section also brings the definition of flood defence for the purposes of defining minimum river flows in section 21 of the WRA into line with that used for flood defence purposes in section 113 of the Act.

51. Provisions in this section are devolved to the Assembly.

52. ***Section 9: Power to provide for further exemptions.***

This section provides the Secretary of State with the power to make regulations so that the restriction on abstraction and impounding works shall not apply in certain cases. Such cases are referred to as “exemptions”. Regulations ensure that an exemption must satisfy any prescribed conditions that may be attached to it, and provide the Agency with the power to determine whether any exemption should apply. Any exemption may apply generally or relate to a geographical area or particular source of supply. Again, this is intended to enable the Agency to exercise levels of control of water resources appropriate to the environmental impact of an abstraction in relation to local conditions.

53. Provisions in this section are devolved to the Assembly.

54. ***Section 10: Orders under section 33 of the WRA, etc.***

Existing legislation provides that a navigation, harbour or conservancy authority or the Agency may apply to the Secretary of State to remove the restriction on abstraction from any source of supply. This new provision provides for the Secretary of State to make regulations to revoke any such order. That revocation can include a

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similar order made under any local or private Act. In addition, the orders under this section can also repeal the provision in any local or private Act containing the power to make such an exception order in future, once all orders under that power have been revoked. The section also allows an order to make provision for the continuation of existing rights to abstract without a licence and for compensation where these are curtailed and result in loss or damages.

55. Provisions in this section are devolved to the Assembly.

Sections 11 to 14 Applications for a licence

56. Provisions in sections 11 to 14 are devolved to the Assembly.

57. ***Section 11: Who may apply for a licence.***

This establishes the qualification necessary in order to apply for abstraction licences: a right of access to the land where the abstraction takes place. Occupation of land continues to serve as evidence of a right of access. Applicants have to demonstrate that they have the right of access for at least one year from the date on which the licence is to take effect, or for the intended duration of the licence if that is less than one year.

58. ***Section 12: Abolition of combined licences.***

Currently, the EA can issue a licence for both an impoundment and an abstraction as a 'combined licence', although only a small number of such licences exist. With the proposals to time limit all new abstraction licences and for an impoundment licence to remain in force until revoked, there are unlikely to be situations in future where a combined licence might be issued. This section therefore repeals section 36 of the WRA, thereby removing the Agency's power to issue a combined licence. Existing combined licences will be converted into separate abstraction and impounding licences.

59. ***Section 13: Applications: types of abstraction licence.***

Applicants have the initial choice of what type of abstraction licence to apply for. This section enables the EA to require an applicant for one type of abstraction licence to apply instead for another type, or to group several related applications together. The applicant can appeal to the Secretary of State against the Agency's decision.

60. ***Section 14: Publication of application for licence.***

Licence applications must be brought to the attention of those likely to be affected by them. This section enables the detailed publication requirements, including the circumstances in which they are dispensed with, to be prescribed in secondary legislation. Where necessary, publication requirements may be undertaken by the EA, whose costs are reimbursed as a separate element of the licence application fee.

Sections 15 to 18 Consideration of licence applications

61. Provisions in sections 15 to 18 are devolved to the Assembly.

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62. Section 15: General consideration of licence applications

This section provides that where an application for the renewal of a time-limited abstraction licence is sought on terms that would constitute a variation of the licence if the licence were continuing, the licence is considered in two stages. Firstly, those aspects that constitute the variation element would be determined, and then the application is determined for the licence as a whole, so that the impact of the variation element on the protected rights of other abstractors (see sections 16 and 17) can be assessed for the new licence. Where renewal is sought on the same terms as the expiring licence then this two stage determination is not applied, because there would be no need to reconsider the impact on existing protected rights.

63. The section also provides that the EA is to have regard to the statutory duties of bodies such as drainage and navigation authorities brought into the licensing system by sections 5 and 7 when considering licence applications from those bodies.

64. Section 16: Protection from derogation.

Under the current legislation, the EA cannot grant an abstraction or impounding licence that derogates from any “protected rights”, except with the consent of the person entitled to those rights. Those rights recognise an established entitlement to abstract a certain quantity of water, for certain purposes. This section limits the protection against derogation for new licence holders to rights arising from a full licence. For transfer and temporary licences however, some effective protection of licence-holders’ rights is delivered by the continuing requirement upon the EA to have regard to river flow levels and other lawful uses of inland waters when granting licences. Existing licence holders who fall outside licensing as a result of the revised threshold introduced by section 6 continue to benefit from protection from derogation. Where an application is made to renew an existing time-limited licence, then that application will be assessed against the protected rights of other abstractors which existed at the time of the original grant. The rights of those later abstractors will therefore not trump the rights of earlier, established abstractors.

65. Section 17: Protected rights.

Currently, owners of land bordering rivers or lying above groundwater are taken for the purpose of the WRA to have rights to abstract up to 20 m³ of water per day for domestic purposes or agricultural purposes other than irrigation (e.g. for stock watering). Section 17 preserves the classes of abstractor that benefit from the protected rights. The volume of water to which the protected right applies may, however, be reduced to coincide with a lower threshold introduced by an order made under new section 27A (section 6). Should the threshold subsequently rise, the protected right will remain at the lower level. Examples of how this works are given in the box below

The exemption threshold – worked examples

Consider the case of an abstractor A who has a protected right for his abstraction from groundwater for domestic purposes and is in a position to abstract 13 cubic metres per day in an area where the exemption threshold is 20 cubic metres per day.

i) Case 1. Where the local threshold is raised to 25 cubic metres per day. The

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abstractor may abstract up to 25 cubic metres per day but his protected right remains at 13 cubic metres per day (assuming he remains in a position to abstract that amount).

ii) Case 2. Where the local threshold is reduced to 10 cubic metres per day Abstractor A will require an abstraction licence for 13 cubic metres per day, and (if that were granted) would enjoy corresponding protected rights by reason of that licence.

a) If abstractor A can only obtain a licence for 10 cubic metres per day, then he may be able to seek compensation in relation to losses suffered as a result of the difference in volume between what he could previously abstract, and what he can now abstract.

b) Where the licence is issued for 13 cubic metres per day then no loss arises.

iii) Case 3. If the threshold under case 2 is raised at a later date to 25 cubic metres per day. In this case, the licence would no longer be required and the protected right would be set at the previously licensed volume of 10 (case 2 a) or 13 (case 2 b). But abstractor A could take up to 25 cubic metres per day in total without an abstraction licence.

iv) Case 4. If the threshold under case 3 is lowered to 5 cubic metres per day then a licence to abstract more than this volume would again be required. Compensation could become payable if a licence cannot be granted for the volume being abstracted under the protected right (either 10 or 13 cubic metres per day). The protected right under the licence will be set at 5 cubic metres per day. If a further change results in the threshold rising again, then the protected right for the unlicensed abstraction will remain at 5 cubic metres per day, but abstractor A can abstract volumes up to the new threshold without a licence.

66. The section also applies a protected right to those abstractors whose licence lapses by virtue of falling below the relevant volume or purpose threshold for so long as they continue to abstract. The protected right lapses after four years of non-abstraction unless the abstraction is irregular in nature (e.g. it is only required under certain conditions) in which case it may continue if the Agency agrees. These provisions will also apply where a person transfers part of his licensed abstraction rights to someone else, and that part (or his remaining part) no longer requires an abstraction licence (provided some abstraction occurs within any given period of four years).

67. ***Section 18: Register of certain protected rights.***

In water stressed areas, it may be necessary for the EA to have detailed knowledge of all the protected rights to which it must have regard in its licensing activity. Section 18 provides a power to make regulations to set up a Register of Protected Rights in such areas. Where a Register exists, an abstractor will need to register his protected right within two years of the Register coming into existence if he wants that right to continue.

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Sections 19 to 20 Form, contents and effect of licences.

68. Provisions in sections 19 to 20 are devolved to the Assembly.

69. ***Section 19: Form, contents and effect of licences.***

Currently, abstraction licences granted to some types of applicants (notably water undertakers) are not required to state the purpose for which the abstracted water is used or the land on which it is used. This section places all new abstraction licences on the same footing by requiring them all to state the purpose of the relevant abstraction, but none to state the land on which the water is to be used.

70. This section also requires every new abstraction licence to state the dates on which it takes effect and expire, but it does not specify a licence length. The Environment Agency will determine licence length on a case-by-case basis according to local circumstances. There is a policy presumption, set out in *Taking Water Responsibly*, that a licence will be renewed subject to three tests being met. These tests, in outline, are: that water resources in the area are sustainable and the abstraction will not create unacceptable environmental effects; that the holder has a continuing requirement to abstract; and that the abstracted water is used efficiently.

71. Full licences must state the quantity of water authorised for abstraction but this is at the EA's discretion in the case of transfer and temporary licences. A licence with a duration of longer than 12 years must also state a minimum volume to which abstraction can be reduced without compensation being payable under section 25.

72. ***Section 20: Limited extension of abstraction licence validity.***

If the Agency receives a valid application to renew a full or a transfer licence which has a duration of more than twelve months on the same terms at least three months before its expiry date, this section provides that the licence will not expire until the application is determined.

Sections 21 to 22 Modification of licences

73. ***Section 21: Modification of licences.***

At present the EA is under a duty to revoke an impounding licence at the request of the holder, who can thereby avoid any conditions attached to the licence that impose continuing obligations. The section changes the Agency's duty to revoke to a power and allows the revocation of an impounding licence to be made conditional on removal of the works or restoration of the site to the Agency's satisfaction.

74. Provisions in this section are devolved to the Assembly.

75. ***Section 22: Proposals for modification at instance of Agency or Secretary of State.***

This ensures that the EA is able to vary impounding licences in a way that requires that the impounding works themselves are modified as necessary. Specific publication and notification arrangements for licence modification proposals are removed from the primary legislation.

76. Provisions in this section are devolved to the Assembly.

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Section 23 Transfer and appointment of licences

77. *Section 23: Transfer and appointment of licences.*

The current provisions for succession to abstraction licences are replaced by this section. The condition for allowing transfer is that the transferee has a right of access to the abstraction point. A licence may also be apportioned between two or more people as long as the total quantities of water abstracted by the new holders do not exceed the quantity authorised to be abstracted under the old licence. The holder of a licence and the proposed transferee(s) are required to give notice to the EA of their agreement to the transfer or apportionment of that licence.

78. Licences are considered to be part of the estate of a deceased holder, and of the property of a bankrupt, and vested accordingly. Full or transfer licences will lapse after 15 months if the EA is not informed of the vesting by the person in whom the licence vests.

79. Impounding licences will also be transferable in the same way as abstraction licences (but may not be apportioned), and similar arrangements apply for licence succession on death and bankruptcy.

80. Provisions in this section are devolved to the Assembly.

Sections 24 to 27 Claims and compensation

81. Provisions in sections 24 to 27 are devolved to the Assembly.

82. *Section 24: Claims arising out of water abstraction.*

This section establishes a new statutory right of action against an abstractor, whether licensed or not, whose abstraction causes loss or damage to another person. It also removes the existing defence against civil actions in respect of licensed abstractions. This means that those persons who do not have protected rights or fishing rights and who have suffered loss or damage as a result of an abstraction may seek financial compensation for that loss or damage from the abstractor. The courts are not able to grant an injunction against a licence holder if that risks interrupting the public water supply, or putting public health or safety at risk. Bearing in mind the new statutory right of action, other civil claims (except for negligence or breach of contract) are now excluded.

83. *Section 25: Compensation for modification of licence on direction of Secretary of State.*

The Agency has powers to revoke or vary any abstraction licence; its decision is subject to appeal to the Secretary of State. Currently, if a licence that has not been used for seven years is revoked or varied, then the holder is not entitled to compensation. This section reduces the period of non-use for this purpose to four years. The Agency would not be expected to revoke licences that are held for valid contingency planning reasons (so-called 'sleeper' licences).

84. For new licences, this section removes any entitlement to compensation if a licence is varied in order to protect water availability in the source of supply to which the licence relates. Compensation is not payable where a variation does not reduce the

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amount of water licensed to below the minimum amount specified in any licence. This provision only applies to a licence (of greater than 12 years duration) that has been granted after section 19 of this Act has come into force, where the variation takes effect twelve years or more after the licence was granted.

85. ***Section 26: Recovery of compensation from new licence-holder.***

The EA can already revoke a water undertaker's abstraction licence and grant a licence to another undertaker for water resources management reasons. In such circumstances, this section allows the Agency to recover costs from the water undertaker granted the licence to compensate the undertaker whose licence was revoked.

86. ***Section 27: Withdrawal of compensation for certain revocations and variations.***

This section provides that, with effect from 15th July 2012, an existing abstraction licence without a time limit may be revoked or varied without compensation. This power is confined to cases where the Secretary of State is satisfied that it is necessary in order to protect any waters, channels or underground strata, or any flora and fauna dependent on them, from serious damage. The conservation agencies and the Government will consult on guidance to define such damage.

Sections 28 to 29 Water resources management schemes

87. ***Section 28: Water resources management schemes: other abstractors.***

This section gives the EA the power to enter into arrangements with holders of abstraction licences other than water undertakers for securing the proper management of the waters they use and the reservoirs and works under their control. The arrangements may require reference of any questions arising under the arrangements to the Secretary of State for determination.

88. Provisions in this section are devolved to the Assembly.

89. ***Section 29: Water resources management schemes: referral to Secretary of State.***

Water undertakers or other abstractors may be unwilling to enter into or maintain (or vary) water management arrangements with the EA. This section gives the Agency the power to refer to the Secretary of State the question whether such arrangements should be entered into, renewed or varied and, if so, what their terms should be. The Secretary of State may refer such issues to an appointed person for determination.

90. Provisions in this section are devolved to the Assembly.

Section 30 Enforcement

91. ***Section 30: Enforcement notices, and related procedures and offences.***

Where abstraction or impounding takes place without a licence or does not comply with the terms of a licence, this section gives the EA the power to issue an enforcement notice. This can only be done where it appears to the Agency that the licence breach or failure to comply is causing or could cause significant damage to the environment. The enforcement notice requires cessation of the breach or failure to

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comply and the carrying out of specified works or operations to remedy or mitigate the effects. The Secretary of State may make regulations about enforcement notices. A person who fails to comply with an enforcement notice is guilty of an offence and liable, on summary conviction, to a fine not exceeding £20,000 or, on conviction on indictment, to a fine. If necessary the Agency may take proceedings in the High Court to secure compliance with the notice. The Agency may also carry out the works itself at the expense of the person on whom the enforcement notice is served, if the person fails to comply with the notice. The Agency may also carry out the works itself at the expense of the person on whom the enforcement notice is served, if the person fails to comply with the notice.

92. Provisions in this section are devolved to the Assembly.

Sections 31 to 33 Miscellaneous

93. ***Section 31: Bulk supplies.***

This section permits the EA, in consultation with the Authority, to propose to a water undertaker that they enter into a bulk supply agreement with another water undertaker where that is necessary for the proper use of water resources. The Agency would be able to take any refusal to enter into such a bulk supply agreement into account when considering whether to grant abstraction and impounding licences.

94. Provisions in this section are devolved to the Assembly.

95. ***Section 32: Visiting forces.***

This section ensures that visiting forces are placed in no more favourable a position than UK forces when Crown exemption from abstraction or impoundment licensing is lifted.

96. ***Section 33: Application of certain water resources provisions to this Act.***

The changes to the abstraction and impounding regime introduced in Part 1 of the Act generally modify the WRA. But sections 3, 4 and 10 do not, and instead they will remain as free-standing provisions of the Water Act 2003. Sections 3,4 and 10 do, though, relate to the functions and powers under Chapter 2 of Part 2 of the WRA. The provisions of section 33 therefore apply a number of the general provisions of the WRA to these sections as if they are part of the WRA. This includes for example, the power to obtain information from abstractors under section 201.

PART 2: NEW REGULATORY ARRANGEMENTS, ETC

Sections 34 to 38 and Schedules 1 to 3 Establishment, etc of new bodies

97. Sections 34 to 38 make express provision in relation to the Assembly.

98. ***Section 34 and Schedule 1: Water Services Regulation Authority.***

This section adds a new section 1A to the Water Industry Act and repeals Section 1 and Schedule 1A of that Act.

99. *New Section 1A* establishes the Water Services Regulation Authority, and provides that it is a body corporate that performs its functions on behalf of the Crown.

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The Welsh name for this Authority is specified as the Awdurdod Rheoleiddio Gwasanaethau Dŵr.

100. Subsection (2) inserts a new Schedule 1A into the Water Industry Act which sets out the provisions for the appointment and conditions of members of the Authority, stipulating that the Authority comprises a chairman and at least two other members, to be appointed by the Secretary of State in consultation with the Assembly. The Schedule also provides for the appointment of staff to serve the Authority, for proceedings, including the delegation of functions, within the Authority, and for a code of practice.

101. Subsection (3) abolishes the office of the Director General of Water Services.

102. ***Section 35 and Schedule 2: Consumer Council for Water.***

This section adds two new sections 27A and 27B and a new Schedule 3A to the Water Industry Act 1991.

103. The intention of this section (along with Schedule 2) is to establish a new independent Consumer Council for Water (CCW), which may be known as ‘Cyngor Defnyddwyr Dŵr’ in Welsh.

104. Subsection (1) adds new sections 27A and 27B to the WIA. *New section 27A* creates the CCW as a body corporate and requires the Council to allocate undertakers to regional committees.

105. Subsections (4) to (6) in new section 27A give the Secretary of State and the Assembly (for undertakers wholly or mainly operating in Wales) power to direct the allocation of undertakers to regional committees for a six month period. Thereafter the Council may establish or abolish a regional committee, or alter an undertaker’s allocation, only with the consent of the Secretary of State or Assembly.

106. Subsections (9) to (13) in new section 27A set out the remit of regional committees and provides definitions of ‘consumers’, ‘the interests of consumers’ and ‘consumer matter’ in relation to the Council’s responsibilities. Broadly, the interests of consumers mean the interests of existing and future consumers of water and sewerage services (via the public networks). Subsection (12) adds a duty for the Council, to exercise and perform its duties in a manner that is best calculated to contribute to the achievement of sustainable development.

107. *New section 27B* requires the Council to make arrangements with the Authority, the Assembly and the Secretary of State to secure co-operation and to exchange information, and for consistent treatment of matters of concern. Arrangements are to be set out in a Memorandum of Understanding and are to be kept under review by the parties. Every memorandum should be circulated to the other bodies, and the Secretary of State is required to lay a copy of each memorandum before each House of Parliament.

108. Subsection (2) adds Schedule 3A to the WIA. This provides for the internal operation of the Council, including membership of the Council and the terms of appointment and remuneration of members, staff, annual reports to the Secretary of

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State, financial provisions and accounts, and committees, including regional committees.

109. Subsection (3) abolishes the existing customer service committees.

110. ***Section 36: Transfer to Authority and Council of functions, property etc.***

This section (along with Schedule 3) transfers the functions of the Director to the Authority and effectively removes all references in the Water Industry Act to the Director General of Water Services (or “the Director”), and replaces them with Water Services Regulation Authority (or “the Authority”). It also allows the Secretary of State to make transfer schemes for the transfer of property, rights and liabilities from the Director to the Authority or to the Council.

111. ***Section 37: Conditions relating to costs of water regulation.***

This section gives the Authority power to modify conditions of appointment of a company as a water or sewerage undertaker to provide for the recovery of the expenses of the Council, the expenses incurred in setting it up and the expenses incurred in abolishing the existing customer service committees.

112. Subsection (6) requires the Authority to consult water companies before making any such changes in their appointments.

113. Subsection (7) sets out that this power is only exercisable within two years of commencement.

114. Subsection (8) states that the Secretary of State may (after consulting the Assembly) issue directions to the Authority on the inclusion of payment conditions in the conditions of appointment.

115. ***Section 38: Forward work programmes and annual reports.***

This section adds two new sections (192A and 192B) to the WIA and repeals sections 193 and 194 of the same Act.

116. *New section 192A* requires both the Authority and, separately, the Council to publish before each financial year a forward work programme. The forward work programmes should contain a general description of projects apart from routine activities, which the Council or Authority plans to undertake during the year, including associated objectives and an estimate of the overall expenditure for the year. The Authority and the Council must both consult on drafts of the programmes.

117. *New section 192B* requires the Authority to produce, for the Secretary of State, an annual report on its activities, and those of the Competition Commission in respect of any references made by it, during the previous financial year. The report shall include a general survey of development of matters falling within the scope of its functions, a report on progress of projects described in the forward work programme for that year, a summary of orders and penalties imposed and a report on any matter which it is required to report on as a result of a requirement by the Secretary of State or the Assembly.

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118. The Secretary of State shall lay the report before each House of Parliament and publish it. A copy of each report must be sent to the Assembly, Council and Drinking Water Inspectorate.

119. Subsection (8) in new section 192B provides that the Authority shall have regard to excluding information which might be prejudicial to the interests of an individual or body.

Sections 39 to 42 Objectives of regulation of water industry

120. Provisions in sections 39 to 42 are devolved to the Assembly.

121. *Section 39: objectives and duties under WIA*

This section amends section 2 of the WIA. New subsections (2A), (2B) and (2C) amend the general duties which affect the manner in which the Secretary of State and Authority exercise their specified functions under the WIA. They are given a new consumer objective to protect the interests of consumers of regulated water and sewerage services, wherever appropriate through promoting effective competition. They are under a duty to further that objective, to secure that the functions of water undertakers and sewerage undertakers are properly carried out throughout England and Wales, to secure that companies holding appointments are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of the functions specified in the conditions of their appointments, and to secure that the activities and functions of licensed water suppliers are properly carried out.

122. In determining the “interest of consumers” for the purpose of the consumer objective, the regulator should take into account the interests of all customers. However, the regulator should also have regard for consumers who are disabled or chronically sick, are of pensionable age, have low incomes or reside in rural areas. In addition, the regulator should have regard for customers of undertakers whose premises are not eligible for supply by licensed water suppliers. This is intended to enable the regulator to balance the interests of these and eligible customers.

123. New subsection (2E) empowers the Authority and Secretary of State, in exercising any function in relation to water, to have regard to any interests of consumers of gas, electricity and telecommunications services, which are affected by the carrying out of that function.

124. New subsection (3) provides that, subject to the primary duties in new section (2A), the Authority or the Secretary of State should carry out their duties in such a manner as to

- promote efficiency and economy on the part of companies appointed as water and sewerage undertakers;
- ensure that there is no undue discrimination in the fixing of water and drainage charges;
- secure that the interests of customers and potential customers of such companies are protected as regards the sale of land;

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- ensure that the interests of customers and potential customers are also protected in relation to any activities undertaken by their water or sewerage undertaker that are unrelated to their functions as statutory undertakers, or in relation to the activities of any person who appears to be connected with the undertaker, including through the presentation of accounts in a suitable form; and
- contribute to the achievement of sustainable development.

125. New subsection (4) provides that in exercising their powers and performing their duties set out in subsection (1), the Secretary of State and the Authority shall have regard to the principles of best regulatory practice, including transparency, accountability, proportionality, consistency and targeting.

126. Subsection (9) provides for the provisions of this section not to detract from other duties imposed on the Authority or Secretary of State.

127. ***Section 40: Guidance to the Authority on social and environmental matters.***

This section adds a new section 2A to the WIA. Similar provision was made in the Utilities Act 2000 for the gas and electricity industries.

128. The section allows the Secretary of State, or for water and sewerage undertakers whose areas are wholly or mainly in Wales, the Assembly, to issue statutory guidance to the Authority. The subject of the guidance is how the Authority might contribute to social and environmental policies.

129. Subsection (2) in new section 2A requires the Secretary of State and the Assembly, where practicable, to have regard to the costs and benefits which may be expected to result from the guidance.

130. Subsection (3) in new section 2A requires the Authority to have regard to any such guidance when discharging its statutory functions.

131. Subsections (4) to (8) in new section 2A set out the conditions under which the Secretary of State or the Assembly may issue guidance.

132. Subsection (9) in new section 2A requires the Secretary of State and the Assembly to publish any guidance.

133. ***Sections 41 and 42: Standards of performance in relation to water supply and sewerage services.***

Section 41 amends section 39 of the WIA. It extends the existing arrangement whereby the Secretary of State can make regulations in response to proposals for new or amended standards of performance only in response to a specific proposal from the Authority. The amendments made by this section will allow the Secretary of State to initiate such proposals as long as a number of criteria specified in the amended section are met.

134. A new subsection (A1) is inserted into section 39 of the WIA to allow the Secretary of State to make regulations either on application by the Authority, or otherwise under certain conditions.

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135. Subsection (3) amends the list of bodies that must be served notice of an application by the Authority to include the Council and any other persons or bodies the Secretary of State may consider appropriate.

136. Subsection (6) inserts new subsections (4) – (8). These subsections allow the Secretary of State to make regulations under section 38 if no application has been made by the Authority, as long as he considers that the regulations will contribute to the attainment of policies relating to public health and the environment, or if not, that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made. The subsections govern the procedure.

137. Similar amendments are made to section 96 of the WIA in relation to sewerage service, by section 42.

Sections 43 to 47 Functions of the Council

138. Certain provisions in sections 43 to 47 are devolved to the Assembly by way of the Transfer of Functions Order. In certain other cases, express provision is made in relation to the Assembly.

139. *Section 43: General functions of the Council.*

This section adds seven new sections (27C to 27G, 30ZA and 30ZB) to the WIA.

140. *New section 27C* requires the Council to have regard for the interests of individuals that are disabled, chronically sick, of pensionable age, with low incomes, residing in rural areas, or not eligible to be supplied by a licensed water supplier alongside other consumers.

141. *New section 27D* requires the Council to obtain and review information about consumer matters, including consumer views on such matters, in different areas of England and Wales.

142. *New section 27E* gives the Council the function of making proposals, providing advice and information about consumer matters and representing consumer views to public authorities, water companies, licensed water suppliers, and any other body whose activities may affect the interests of the consumers.

143. Subsections (2)-(4) in new section 27E provide that the Council shall not disclose any information relating to a particular individual or body, unless the individual or body involved has given consent, the information is already available from another source or if it is the Council's opinion that the published information does not seriously and prejudicially affect the interests of the individual or body concerned.

144. In the last case the Council must consult the individual or body concerned and have regard to any opinion expressed by the Authority.

145. Subsections (5) and (6) in new section 27E put restrictions on the Council not to publish any information which relates to any matter which is or is likely to be the subject of criminal proceedings. The Council is also required in these circumstances to have regard of the opinion expressed by the Secretary of State, the Assembly or the Director of Public Prosecutions.

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146. Subsection (7) in new section 27E states that the restrictions in subsections (2) to (5) do not apply to the disclosure of information to the Authority, the Secretary of State, the Assembly, the Competition Commission or any other public authority.

147. *New section 27F* gives the Council the function of providing information to consumers about consumer matters. This section only deals with information that is already available to the public. The intention is that the Council is able to bring together comparable information from different companies, or sources, and make it available (both on own initiative, and on request) in forms that are useful to consumers.

148. Subsection (4) in new section 27F requires the Council to maintain at least one office in both England and Wales, where the consumers can apply for information.

149. *New section 27G* gives the Council power to publish any information and advice about consumer matters, if it thinks it is in the interest of consumers. Subsection (3) in new section 27G restricts this power, so the Council cannot publish any information relating to a particular individual or body unless the person or body has given its consent to the publication or if the information is already available from another source or if it is the Council's opinion that the published information will not seriously and prejudicially affect the interests of the individual or body concerned.

150. Subsection (4) in new section 27G requires the Council in this last case to consult the individuals concerned and the Authority before publishing such information.

151. Subsections (5) and (6) in new section 27G puts restrictions on the Council not to publish any information which relates to any matter which is or is likely to be subject of criminal proceedings. The Council is required in these circumstances to have regard to the opinion expressed by the Secretary of State, the Assembly or the Director of Public Prosecutions.

152. *New section 30ZA* places a general duty on the Authority to consult the Council in relation to the exercise of its functions, except where the Council has requested not to be consulted or the Authority considers it to be clearly inappropriate. This general duty is in addition to any specific duties to consult the Council that are already in the Act (e.g. the requirement for the Authority to consult the Council about its code of practice in Schedule 1).

153. *New section 30ZB* requires the Authority to send to the Council a copy of any document it is required to publish under the terms of the WIA.

154. ***Section 44: Provision of information to the Council.***

This section adds four new sections (27H to 27K) to the WIA.

155. *New section 27H* grants the Council rights to direct the Authority, undertakers or licensed water suppliers to supply information it needs to carry out its functions. Those so directed must provide the information as soon as reasonably practicable and in the form the Council requires. The Council is required to have regard to the desirability of minimising the compliance burden for the Authority and the

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undertakers. If a body does not provide information sought by the Council, it must give the Council its reasons if the Council requires.

156. *New section 27I* allows the Council to publish reasons that the body gives for any refusal to supply it with information in its possession, provided that those to whom the information relates have consented, or it is already in the public domain, or it will not cause serious and prejudicial effects to those to whom it relates. The Council is obliged to consult such persons in this last case, and to consider the opinion of the Authority, before deciding whether to publish the reasons. Disclosure is also restricted where information relates to any matter which is, or likely to be, the subject of criminal proceedings. The Council, in deciding whether disclosure is appropriate in such cases, needs to consider the opinions of the Secretary of State, the Assembly or the Director of Public Prosecutions.

157. *New section 27J* enables the Authority, the Secretary of State or the Assembly to direct the Council to provide reasonable information which they require for the exercise of their functions. These bodies are entitled to reasons from the Council for a refusal to provide the information requested. These bodies may publish the reasons, subject to the need to exclude information the publication of which might cause serious and prejudicial effects to persons to whom it relates.

158. *New section 27K* gives the Secretary of State a power to make regulations setting out the categories of information which the Authority or an undertaker may refuse to provide when the Council requests it, or the categories of information which the Council may withhold from the Authority or the Secretary of State when a request is made.

159. Subsection (2) in new section 27K provides that an undertaker's refusal to supply information to the Council can be referred to the Authority. Under subsection (3) in new section 27K the Secretary of State may provide through regulations for another person to adjudicate failures to comply with any directions under sections 27H or 27J.

160. Subsection (4) in new section 27K sets out the duties of an adjudicator. An order against a company issued under this section is enforceable by the Authority.

161. ***Section 45: Provision of statistical information to consumers etc.***

This section adds two new sections (38B and 95B) to the Water Industry Act 1991.

162. The new 38B gives the Council a duty to publish statistical information relating to consumer complaints (made to the Authority, the Council, the Assembly, the Secretary of State or directly to undertakers or licensed water suppliers and their representatives) and the handling of those complaints. The new 95B makes similar provision for sewerage undertakers.

163. The Council has discretion over the form and frequency of the publication of the statistics.

164. ***Section 46: Consumer complaints.***

This section inserts a new section 29 into the WIA. It sets out the circumstances in which the Council should seek to resolve consumer complaints against undertakers or

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licensed water suppliers, unless frivolous or vexatious. The Council has powers to obtain information relevant to a complaint from the undertaker, or licensed water supplier, concerned in order to facilitate the process of seeking to resolve the complaint in a satisfactory manner. The Council does not have the power to impose a settlement between the parties in any complaint, but is required to refer certain disputes to the Authority for resolution. The Council is required to refer the matter to the Secretary of State or Assembly (where the matter relates to an undertaker whose area is wholly or mainly in Wales) if an offence has been committed or is suspected. The Council, on concluding an investigation, may make a report to the Authority, Secretary of State or the Assembly. The contents of the report may not be disclosed or published by any party without the consent of any individual complainant that is or could be identified in the report. This section also requires consumer complaints made direct to the Secretary of State, the Assembly or the Authority to be referred to the Council, unless they are frivolous or vexatious.

165. Section 47: Investigations by the Council.

This section adds a new section to the WIA. New section 29A gives the Council scope to carry out investigations relating to the interests of consumers where no specific complaint has been made. The Council is required to consult the Authority, the Secretary of State and the Assembly before embarking on such an investigation. After an investigation the Council may make a report to the Authority, the Secretary of State, the Assembly, the Office of Fair Trading or any other public authority that has an interest in the matter. The Council may also publish these reports, subject to certain restrictions on disclosure of information relating to individuals or bodies. Disclosure is also restricted where information relates to any matter which is, or likely to be, the subject of criminal proceedings. The Council, in deciding whether disclosure is appropriate in such cases, needs to consider the opinions of the Secretary of State, the Assembly or the Director of Public Prosecutions.

Sections 48 to 49 Enforcement of obligations

166. Section 48: Financial penalties.

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

167. *New section 22A* allows financial penalties to be imposed for contraventions of appointment conditions, licensees' conditions, statutory or other requirements, and failure to achieve standards of performance of water supply or sewerage services as prescribed under section 38(2) or 95(2) of the WIA. Subsections (1) and (2) allow for the case where a licensed water supplier has caused or contributed to a breach of an undertaker's condition of appointment or caused or contributed to an undertaker contravening a statutory or other requirement; or where an undertaker has caused or contributed to the breach of a licensed water supplier's licence or caused or contributed to the latter's contravening a statutory or other requirement. In those cases, the Authority may impose an appropriate penalty. This is to cater for the relationship between licensed water suppliers and undertakers where one may contribute to the contravention of a responsibility of the other party. References in

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sections 22A to 22C to contraventions include references to causing or contributing to a contravention.

168. The power does not apply to contraventions committed before the power comes into effect. Receipts from financial penalties are paid into the Consolidated Fund. The new power operates alongside existing order-making powers.

169. The penalty must be of a reasonable amount in all the circumstances of the case and in no instance should be more than 10% of the undertaker's annual turnover, as determined in an order by the Secretary of State. An enforcement authority is not able to impose a financial penalty under these provisions in respect of any infringement for which it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.

170. There are procedural requirements for the imposition of a penalty, including requirements on the enforcement authority to publicise its intentions, give notices with prescribed information, and receive and consider comments from interested parties; procedures for modifying the penalty in the light of representations; and procedures for notifying the company concerned and interested parties of the final decision on the imposition of a penalty. The company may apply to the enforcement authority to pay a penalty in instalments.

171. *New section 22B* requires each enforcement authority to consult on and publish a statement of its policies with regard to the imposition of penalties and calculating their amount, and to take account of those policies when using these new powers.

172. *New section 22C* sets out time limits for the imposition of a penalty, related to the time at which the contravention occurred or, where applicable, the time at which enforcement action was initiated.

173. *New section 22D* makes provision for interest that if the penalty is not paid in full by the required date. However, if the company has made an application to the authority to alter dates of payment, the penalty need not be paid until this application is determined.

174. *New section 22E* provides for an appeal to the Court if a company seeks to question the validity of a penalty order on prescribed grounds. The requirement to pay a penalty is suspended until the case is determined. The court may cancel or reduce the penalty or extend the time-scale to pay. It may also require interest to be paid on the penalty, including on a reduced penalty.

175. *New section 22F* provides that where any part of a penalty has not been paid by the required date, the authority may recover the penalty and any accrued interest, as a civil debt, unless an application against the penalty has been made.

176. ***Section 49: Enforcement of certain provisions.***

This section amends the WIA. The enforcement authority currently has a duty to make an enforcement order in relation to a likely future contravention of a condition of appointment or statutory or other requirement, where a contravention has already taken place. Section 47 replaces this with a duty on the enforcement authority to act

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wherever there is likely to be a contravention of such a condition or requirement in future (whether or not a contravention has previously occurred).

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

Section 50 Remuneration and standards of performance

178. *Section 50: Links between directors' pay and standards of performance*

This section adds a new section 35A to the WIA. The section requires statutory undertakers to disclose whether or not they link the remuneration of the directors to standards of performance, and to give details of how any links affect remuneration.

179. The section requires this disclosure to be made as soon as reasonably practicable after the end of the disclosing company's financial year, and specifies what information must be disclosed.

180. Subsections (5) and (6) in new section 35A require statutory undertakers, when they make their disclosures about the last financial year, also to state the links between directors' remuneration and service standards that are in place for the current financial year. If they do not have any links, but have decided to introduce them in future, they must describe these. If the current or planned links are different from the previous year's, then the company must explain what differences may be expected to result from the change.

181. Under subsection (7) and (8) in new section 35A, statutory undertakers have to make their disclosures in a form with which the Authority is content, and publish them. The Authority can also publish them, though the intention is that it does not do so unless it felt that the publication by the company was in some way unsatisfactory.

182. The Authority is to enforce the disclosure requirement in the same way as if it were a condition of appointment.

183. Provisions in this section are devolved to the Assembly.

Sections 51 to 52 Miscellaneous

184. *Section 51: Reasons for decisions.*

This section adds new section 195A to the WIA. This section requires the Authority, the Secretary of State and the Assembly to give reasons for key decisions that each of them take.

185. Where the obligation bites, the relevant authority is required by subsection (2) in new section 195A to produce a notice giving the reasons for its decision and to publish the notice in a manner that it considers appropriate for bringing it to the attention of those likely to be affected by the decision and/or interested in the reasons contained in the notice. Subsection (3) in new section 195A requires that a copy of the notice should be sent to any statutory undertaker or licensed water supplier directly affected by the decision.

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186. Subsections (4) and (5) in new section 195A restrict the application of this section in certain circumstances.

187. ***Section 52: Co-operation between water regulators.***

This section places a duty on the Secretary of State, the Assembly, the Environment Agency and the Authority to prepare a memorandum of understanding, with each of the others, to cover the co-operation and exchange of information between them and the consistency of treatment of matters which affect them both. The agreed documents are to be laid before Parliament.

Sections 53 to 55 The Competition Commission

188. ***Section 53: Specialist members of the Competition Commission.***

This section provides for the abolition of the Competition Commission's sector-specific utility panel for water. Instead the Utilities Panel, established under the Utilities Act 2000 to deal with electricity and gas references, now also deals with water references. The section allows members of the abolished panel to automatically become members of the Utilities Panel and permits them to continue work on outstanding references after the new statutory arrangements are in place.

189. ***Section 54: Determination references under section 12 of the WIA.***

This section amends section 12 of the WIA. It ensures that the same procedures apply to references to the Competition Commission under section 12 of the WIA (concerning determinations under conditions of appointment) as apply to the Commission in relation to proposals to modify conditions of appointment. It also sets down what the Commission must include in its report following a reference.

190. The section also expands the factors which the Commission may take into account in considering the costs associated with an undertaker's appeal against a determination made by the Authority on price controls. This measure will, in effect, give the Commission discretion to decide whether to include these costs in its calculations, having regard to the extent to which it is likely to support the undertaker's claim against the Authority.

191. ***Section 55: Conditions of appointments under the WIA.***

This section amends sections 14 and 16 of the WIA and inserts a new section 16A and 16B into that Act. It relates to conditions of appointment modification references made under section 16 the WIA.

192. The section enables the Competition Commission to review the Authority's proposal to modify conditions of appointment following the Commission's report on a reference. If it appears to the Commission that the proposed modifications are not requisite for the purpose of remedying or preventing the adverse effects specified in its report, the Commission is empowered to substitute its own modifications which are requisite for the purpose. This section sets out the procedure for notification by the Commission of its intentions to substitute its own modifications and for consultation on the modifications themselves.

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Section 56 and Schedule 4 Licensing of other water suppliers

193. Certain provisions in section 56 and Schedule 4 are devolved to the Assembly by way of the Transfer of Functions Order. Other provisions make express provision in relation to the Assembly.

194. ***Section 56 and Schedule 4: Licensing of other water suppliers.***

This section provides that Schedule 4 should have effect.

195. Schedule 4 covers the licensing of new water suppliers, and inserts new sections 17A to 17R and new sections 66A to 66L into the Water Industry Act.

196. *New section 17A* establishes the licensing of new water suppliers to retail water and/or input water into the statutory undertakers' networks, and sets out the basis on which licensed water suppliers can supply customers.

197. Subsection (1) provides the Secretary of State with the power to grant licences. The Secretary of State can, after consulting the Assembly, authorise the Authority to grant licences on his behalf. A licence will include a retail authorisation and may include a supplementary authorisation. Licences will authorise their holders to carry on the relevant activities in England and Wales.

198. Subsections (2) to (6) detail the two types of authorisation. A retail authorisation (subsection (2)) enables the licence holder to use a water undertaker's supply system for the purpose of supplying water to a customer's premises. A licence which only contains this authorisation is described as a "retail licence". This enables the holder to purchase water from the undertaker to supply to its customers. This must be done through a wholesale agreement with the undertaker. Prospective licensees will therefore be able to apply to offer retail-only services if they do not have, or do not wish to develop, a source of water. Retail services could range from simply contracting with the customer to provide a supply (purchased from the undertaker) and billing them for this supply, to much wider services including water efficiency planning, metering and providing tailored customer services.

199. A supplementary authorisation (subsection (5)) also allows the licence holder to introduce water into the supply system in connection with a supply to customers' premises in accordance with its retail authorisation (but only for that purpose - they will not be authorised to introduce water for supply to anyone else). Licensed water suppliers may have their own sources, or may purchase water from a neighbouring undertaker to import into the 'local' undertaker's supply system through which they are supplying customers. This introduction must be done through an access agreement with the relevant undertaker. A licence including this type of authorisation is described as a "combined licence" (subsection (6)).

200. Before a combined licence is granted, there is a requirement for the Secretary of State and the Assembly to be consulted (or just the Assembly if the Secretary of State grants a licence). This is so that the Drinking Water Inspectorate (who exercise functions in relation to drinking water quality currently on behalf of the Secretary of State and the Assembly) are consulted (subsection (7)) so they can give their assessment as to the applicant's suitability to introduce water into the public supply network.

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201. Subsection (3) excludes licensed water suppliers from supplying premises which are defined as household premises, or those that do not meet the threshold requirement. The competition framework set out in this Act applies only to non-household customers using at least the relevant consumption threshold. Premises may only be supplied by one licensed water supplier. The Authority will enforce the eligibility requirements using the enforcement machinery under section 18 of the Water Industry Act which will be applied to licensees. This will allow it to require action to be taken to rectify a breach of requirements.

202. Subsection (8) restricts licence holders to those who are limited companies. It also excludes water and sewerage undertakers from holding a licence, so they must create new associated companies in order to apply for a licence. This is to ensure the activities of undertakers and licensed water suppliers are kept distinct.

203. Subsections (9) and (10) allow the Authority to issue guidance, subject to approval by the Secretary of State following consultation with the Assembly, on factors that will be considered in determining the extent of a premises. An example may be where guidance was needed on the definition of a hospital site with a number of related buildings.

204. *New section 17B* provides for the procedure for the publication and revision of guidance under section 17A(9). Guidance issued or re-issued by the Authority must be published so as to bring it to the attention of persons likely to be affected by it. The Secretary of State, having first consulted the Assembly, must approve revised guidance before issue.

205. Subsection (5) defines the supply system of a water undertaker for the purposes of the new competition arrangements. A licence will authorise use by licensed water suppliers of undertakers' distribution networks, defined for the drinking water system (potable) as the water mains and other pipes from the undertaker's treatment works to its customer's premises. A licence will also be required to use non-potable networks (systems not used to supply drinking water) which are not connected to any potable system. Access to all other facilities (i.e. treatment works of a potable supply system and upstream from this) is outside the licensing regime.

206. Subsections (6) and (7) provide for the designation of undertakers' treatment works by the Secretary of State after consultation with the Assembly. The Secretary of State will publish a list of those treatment works. There may be a number of different types of treatment works on a system and the list will define the extent of the undertaker's supply system for the purposes of the licensing regime.

207. *New section 17C* defines 'household premises' in relation to section 17A(3)(a). Subsections (1) and (2) define household premises as those in which, or in any part of which, a person has his home, and where the main (principal) use of the premises is as a home. Therefore a large premises with an industrial use but a small caretaker's flat within it, would not qualify as household premises.

208. Subsections (3) and (4) give the Assembly in relation to supply systems of undertakers wholly or mainly in Wales, and the Secretary of State in relation to the

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supply systems of all other undertakers, the power to make regulations to decide what will and will not be included in the definition of household premises.

209. *New section 17D* defines the threshold requirement referred to in section 17A(3)(b).

210. Subsection (2) requires that the licensed supplier estimates, at the time when first entering into an undertaking to supply, that the total quantity to be supplied to the premises annually within the terms of the undertaking is not less than 50 megalitres. This would generally be expected to be the 12 month period following the beginning of supply, but could be another 12 month period if that period were not representative. For example, in order for a new industrial site to contract to be supplied when it is up and running, there might be a case for the expected use when the site is fully operational to be taken into account in the estimate. The Authority's guidance (subsection (3)) will specify the assumptions that might be appropriate in different circumstances. As long as the threshold requirement is met at the time the supply is agreed, a customer can continue to be supplied by the licensed water supplier even if their premises' consumption falls. The threshold requirement is in force at the time of (and each time of) a supply being first agreed between a licensed water supplier and a customer. This is in order not to discourage customers and licensed water suppliers from implementing water efficiency measures.

211. A licensed water supplier is required to follow the Authority's guidance on how it should estimate likely water use. Details on what form this guidance should take (and a mechanism for approval by the Secretary of State in consultation with the Assembly) are provided.

212. The Secretary of State, or for premises supplied by networks of undertakers which are wholly or mainly in Wales, the Assembly, may make regulations regarding the circumstances in which the threshold requirement will not apply, by providing for the circumstances when a licensee will not be regarded as entering into an agreement with a new customer. This power may be used for cases such as corporate reorganisations where a new agreement may be needed even though no real change in the supply relationship has occurred.

213. Subsections (8) to (11) enable the Secretary of State to alter, by regulations subject to affirmative resolution by Parliament, the threshold quantity, after consulting the Authority and such persons, as the Secretary of State considers appropriate. The new threshold will apply only to future agreements and the regulations may provide for it not to apply to undertakings that have been proposed but have not yet been concluded. This might be used, for example, where a determination on a proposed undertaking is with the Authority for resolution under section 17E.

214. Subsections (12) and (13) provide that the Assembly (and not the Secretary of State) will have the power to amend the threshold, for premises supplied using networks of undertakers wholly or mainly in Wales.

215. *New section 17E* enables the Authority to determine, where a proposal to supply is referred to it by a licensed water supplier (or its potential customer), whether a customer is eligible to be supplied with water by the supplier, in accordance with the

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retail authorisation. This will help customers and licensees to be certain that the supply meets the requirements of section 17A(3).

216. *New section 17F* establishes the application process for companies seeking to become licensed water suppliers and the procedure for the Secretary of State or the Authority, as appropriate, to grant water supply licences.

217. Subsections (1) to (3) provide for applications for either type of water supply licence authorisation (either a “retail licence” or a “combined licence”). They also cover applying for a variation to the existing authorisation; to extend from a retail to a combined licence; or change from a combined to retail authorisation. These subsections also provide for the application process to be prescribed by the Secretary of State, including the times within which representations about the applications can be made.

218. Provision is made in subsection (5) to allow certain aspects of the application process to be disapplied in certain cases. For example, should a combined licensed supplier wish to give up the supplementary authorisation, it might not be appropriate for them to go through a full licensing process in order to do so.

219. Subsection (7) lists the bodies to which a copy of a licence or variation should be sent for information when granted. These are the regulatory bodies for the water industry together with the Consumer Council for Water, statutory water and sewerage undertakers and other licensed water suppliers.

220. *New section 17G* allows the Secretary of State (or the Authority acting on his behalf) to include licence conditions in water supply licences.

221. Subsection (1) allows the Secretary of State or, if delegated, the Authority to include any conditions in the licence which seem necessary, bearing in mind their duties under Part 1 of the Water Industry Act (in particular section 2). It also allows for conditions requiring an initial and/or ongoing payment of a licence fee.

222. Licence conditions can be included which need not be connected with the supply of water or introducing water into the public supply network. This would allow the inclusion, for example, of licence conditions which regulated the behaviour of companies due to their association with undertakers.

223. Subsections (3) and (4) allow the inclusion of conditions which require the licensee to comply with directions given by specified bodies (the Secretary of State, the Authority, the Assembly, or the Environment Agency) on specific matters. Conditions can also require the licensed water supplier to do or not do things specified in the licence or only with the consent of a specified body. These provisions also allow for licence conditions which allow the specified body to determine specific questions arising in connection with the licence.

224. Licence conditions can be framed in a way that means they can be triggered (or not) according to specific circumstances, which are included in the condition itself. For example, a licence condition might be triggered when a licensed water supplier had a certain number of customers. This mechanism is in addition to other provisions to modify licence conditions generally.

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225. *New section 17H* describes standard conditions for the water supply licence, and the procedure for excluding or modifying a particular standard condition when granting a licence. This system of standard conditions is modelled on that used in licensing in the gas and electricity markets. Standard conditions ensure that all licences of a particular type contain the same licence conditions as far as is appropriate (so that different standard conditions can be included for retail and combined licences). They also allow licence conditions to be modified collectively.

226. The Secretary of State is given the power to determine and is required to publish standard conditions for water supply licences, before the first time either type of licence is granted. Standard conditions may however be modified later by the Authority through the procedures outlined in the following sections.

227. The standard conditions of licences may specify that a provision within a licence may not come into effect until certain conditions or circumstances are satisfied. The standard conditions may also specify under what circumstances a particular condition may be suspended and/or then brought back into operation.

228. Subsection (5) states that standard conditions do not need to be written directly (in full) into a licence, but are incorporated by reference in the licence to those of the published standard conditions which are relevant to that licence.

229. Subsections (6) to (8) allow the Secretary of State or the Authority, when granting a licence, to exclude or modify any of the standard conditions of a particular licence, as considered appropriate to meet that licensed water supplier's circumstances. Before doing so, the Secretary of State (or the Authority) shall consult on the exclusions or modifications, giving notice of his (or its) intentions, setting out the impact of, and the reasons for the exclusions or modifications, and allowing for representations.

230. Subsection (9) provides that, during the consultation period, the Secretary of State (after consulting the Assembly) can direct the Authority not to exclude or modify any standard condition.

231. Subsection (10) sets out the general test for excluding or modifying any standard conditions. The granting authority must consider that the change will not unduly disadvantage any licence holder with respect to competing with any other licence holders.

232. Subsection (11) ensures that where a standard condition is modified in part in a licence, the unmodified part of the condition continues to be considered as a standard condition of the licence. This provision is also included at 17I(6), 17O(9), 17P(9) and 17R(3).

233. *New section 17I* sets out the procedure by which the Authority can modify the conditions within a particular licence, with the consent of the licence holder. It mirrors the provisions for modifying individual gas and electricity licences set out in the Utilities Act 2000.

234. Subsection (2) enables the Authority to make changes to any condition in a particular licence, but only with the consent of the licence holder. Where a condition is to be modified, the Authority must also believe that the change is necessary and

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will not disadvantage the licence holder in competing with other licensed water suppliers or disadvantage other licensed water suppliers.

235. Subsections (3) and (4) set out the procedure for consulting interested parties about the proposed modification.

236. Subsection (5) gives the Secretary of State the power, after consulting the Assembly, to direct the Authority not to make the modification it was proposing to make.

237. *New section 17J* describes how the standard conditions of the water supply licence are modified. This is the mechanism for changing standard conditions for all licences containing the conditions which are being changed. This means that it is not necessary to obtain individual agreement of each licence holder. This mirrors the provisions for the modification of standard conditions in gas and electricity licences set out in the Utilities Act 2000. This is a mechanism to facilitate changes in licence conditions.

238. Subsection (2) gives the Authority the power to make any incidental or consequential modifications it considers necessary to any other relevant conditions of licences when it is modifying standard conditions.

239. Subsections (3) and (4) require that before the Authority makes any modifications under this section, it gives notice of its intentions, setting out the impact of, and the reasons for the modifications, and allowing for representations. These subsections also set out how the notice should be published and to whom copies should be sent.

240. Subsection (5) enables the Secretary of State, within the notice period, after consulting the Assembly, to direct the Authority not to make a change.

241. Subsections (6) and (7) allow the Authority to proceed with the proposed modifications of the standard conditions if, within the notice period, no objections are made by the relevant licence holders. If one or more licence holders object, then the Authority can go ahead if (a) the percentage of the relevant licence holders making objections is below a percentage specified by order and (b) the proportion of relevant licence holders (weighted according to market share) is below another percentage specified by order. The system of weighting for the purposes of (b) will be prescribed in secondary legislation.

242. Where one or more relevant licence holders object, the Authority can also go ahead with the proposed modifications if the effect is to remove or reduce burdens imposed by existing standard conditions whilst ensuring necessary safeguards are not removed and no licensed water supplier is disadvantaged by the change.

243. Subsection (11) requires that a draft of any statutory instrument containing an order under subsection (6) be approved by both Houses of Parliament using the affirmative resolution procedure.

244. Subsection (12) requires the Authority to publish the modified conditions to existing licences and incorporate them into new licences as it grants them.

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245. *New section 17K* sets out the procedure for the Authority to refer proposed modifications of licences to the Competition Commission. This largely parallels the existing procedure for undertakers, as well as the procedure set out in the Electricity Act 1989 and the Gas Act 1986.

246. Subsections (1) to (3) allow the Authority to refer proposed modification(s) to the Competition Commission, effectively asking it to consider the extent to which the proposed modification addresses matters which operate, or may operate, against the public interest. This includes modifications to the conditions of particular licences or the standard conditions. This is expected to be used if licensed water suppliers object to a modification to either the conditions of a particular licence or the standard conditions proposed by the Authority.

247. Subsections (4) and (5) allow the Authority to give its opinion to the Competition Commission on its concerns which the proposed modification is intended to remedy. It may vary a reference once made (subsection (3)) but must make this public. The Authority is also required to make the initial reference public and, in particular, send a copy to the affected licensees, Council, Secretary of State, the Assembly and Chief Inspector of Drinking Water.

248. Once the Secretary of State has received a copy of the reference, he has 28 days to decide whether to direct the Competition Commission not to investigate the reference or to ignore any variation to the reference. Assuming this power of veto is not exercised, the Authority is required to assist the Commission, in particular, by making relevant information available to it.

249. Subsection (9) requires the Competition Commission, in considering the reference, to have regard to the Authority and Secretary of State's duties under Part 1 of the Water Industry Act.

250. *New section 17L* sets out the time limits in which the Commission reports on references to the Commission are to be made under section 17K. If the report is not made within the specified time period, then the Authority can choose to disregard it. However, the Authority may extend the reporting period once, if it has received a satisfactory representation from the Commission on why the period should be extended. The section sets out the procedures the Authority must follow when authorising an extension.

251. *New section 17M* applies sections 109-116 of the Enterprise Act 2002 in relation to modification references to the Commission in section 17K. Sections 109-116 set out the Commission's powers to require persons to give evidence and to provide specified documents and information needed. These will be applied to the Commission's investigations on modification references.

252. *New section 17N* sets out the procedure for the Commission to use in reporting on a reference made to it under section 17K.

253. Having considered a reference made under section 17K, the Commission must publish a report on its findings. This report will include conclusions on the questions raised in the reference and, if relevant, details and conclusions in relation to its public interest findings. If the Commission concludes that a licence modification would

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remedy the adverse public interest effects described, it has to specify such a modification (or modifications).

254. If the Commission's report concludes that modifications should be made to water supply licences, the Authority will only act to modify a condition under section 17O, (and the Commission will only be able to veto modification made by the Authority under new section 17P), if two-thirds of the group that made the report is in agreement.

255. Subsection (4) gives the Commission the defence of absolute privilege against the law of defamation for any report made under 17K.

256. Subsections (6) to (8) list three considerations to which the Commission must have regard (as far as is practicable) before disclosing any information under 17K. First, the need to exclude any information that the Commission thinks is not in the public interest to publish. Second, the need to exclude any information that the Commission thinks could significantly harm legitimate business interests of the undertaking to which it relates, or an individual's private interests. Third, the extent to which the disclosure of the information is necessary for the purposes of the report.

257. Subsections (9) to (11) require the Commission to send its report to the Authority which, in turn, sends a copy to various bodies and in due course publishes it.

258. The Secretary of State is given 14 days in which to direct the Authority to remove any material which is against the public interest or commercially sensitive from the report before the Authority makes it public.

259. *New section 17O* sets out the procedure for the modification of licences by the Authority following a report from the Commission.

260. Subsection (1) states that if a report from the Commission concludes that matters specified in the reference act against the public interest and specifies a licence modification intended to remedy the effects described, then the Authority is required (subject to the other provisions in this section) to make an appropriate modification (or modifications) to the conditions of a particular licence or the standard conditions.

261. If the Authority proposes a modification of the standard conditions (under this section) it may also make minor incidental modifications to conditions of existing particular licences as a consequence.

262. Subsection (3) provides that in making modifications under section 17O the Authority is required to have regard to the modifications specified in the report.

263. The Authority must consult publicly on its proposed modification for at least 28 days. The parties consulted must include the Council, the Secretary of State, the Assembly and the Drinking Water Inspectorate. Having considered responses to the consultation, the Authority notifies the Commission of its intention to make the modification, and the reasons for doing so, and sends the Commission a copy of the responses to the consultation.

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264. Subsection (8) requires the Authority to make the modification if the Commission does not veto the proposed modification within four weeks of the Authority's notice.
265. Modifications of standard conditions made by the Authority are to apply to existing licences and the standard conditions of future licences.
266. *New section 17P* sets out the Commission's power to veto a modification that the Authority proposes to make to either conditions of particular licences or to the standard conditions, in response to a report from the Commission made under section 17N.
267. If the Commission judges that the Authority's proposed modification(s) do not remedy the adverse effects in its report, this section gives the Commission the power to veto the Authority's modification by means of a direction and substitute its own. This parallels the procedure set out in the Utilities Act 2000.
268. The Commission is given four weeks after receiving the proposed modification from the Authority, to veto all or part of the modification. This period may be extended by 14 days by the Secretary of State on application by the Commission.
269. Subsection (3) allows the Commission to veto a proposed modification only if it does not have the desired effect set out in the Commission's report.
270. Subsections (4) to (6) require the Commission, if it vetoes the Authority's proposed modification, to publish a notice giving the reasons for its veto. It must then propose, and consult on, its alternative modification, with a consultation period of not less than 28 days. After considering responses to the consultation, the Commission can make a modification and publish a notice setting this out and its reasons for doing so.
271. Subsections (7) and (8) set out the processes that the Commission undertakes in order to bring any such modifications to the attention of persons likely to be affected by them.
272. Subsections (10) to (11) allow the Authority to make minor changes to existing licence conditions as a consequence of the Commission's modification. In addition, if the Commission modifies a standard licence condition, the Authority is required to make the same modifications to the standard conditions so that the modification is incorporated in all future licences.
273. *New section 17Q* gives the Commission the defence of absolute privilege, in relation to the law of defamation, when publishing information under subsections (4)(a), (6), or (8) of section 17P, but requires that the Commission have regard to certain considerations before publishing.
274. Subsections (3) to (5) list the three considerations to which the Commission must have regard (as far as is practicable) when publishing information under section 17P. First, the need to exclude any information that the Commission thinks is not in the public interest to disclose. Second, the need to exclude any information that the Commission thinks could significantly harm the legitimate business interests of the

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undertaking to which it relates, or an individual's private interests. Third, the extent to which the disclosure of the information is necessary for the purposes of the notice.

275. Subsections (6) to (10) modify and apply sections 109-116 of the Enterprise Act 2002 for the purposes of the Commission exercising its functions under section 17P. Sections 109-116 set out the Commission's powers to require persons to give evidence and to provide specified documents and information needed for the modification of licences.

276. *New section 17R* mirrors section 17 of the Water Industry Act (as it applies to undertakers and is modified by the Enterprise Act 2002). This allows modification of licence conditions as a result of merger investigations and market investigations under the Enterprise Act.

277. Subsections (1) and (2) provide for the Office of Fair Trading, the Commission or the Secretary of State to modify water supply licence conditions where any of those bodies have made an order as defined in subsection (2).

278. Subsections (3) to (4) contain provisions dealing with modifications to standard conditions similar to those found in section 17O subsections (2), (9) and (10).

279. *New section 66A* sets out the conditions which must be satisfied before a primary water undertaker (as defined in subsection (8)) is required to provide a wholesale supply of water to a licensed water supplier to enable it to supply its customers. This requirement only applies in respect of customers in the undertaker's appointed area.

280. Where a licensed supplier requests an undertaker to provide a supply of water for the purpose of supplying the premises of its customers, the undertaker is under a duty to take steps to enable the supply to be made and to provide that supply on certain terms agreed with the supplier or determined by the Authority. The undertaker must take any such steps as may be provided for under the agreement or determination for enabling the supply to be made. These steps may include, for example, connecting a new customer to the main.

281. The duty to provide a supply does not apply if certain conditions are satisfied. The duty does not apply if connecting the premises would result in a contravention of regulations made under section 74. This is to ensure that there is no contamination of the water supply from fittings in a customer's premises. If the premises to be supplied are not a building of some type (e.g. agricultural land) or if the supply is for non-domestic purposes, then the undertaker is in addition not under a duty to supply if it would put at risk its ability to meet all its other existing obligations to supply for domestic and other purposes together with its probable future water supply obligations to supply for domestic purposes. It may also refuse to supply water if it would incur unreasonable expenditure in so doing.

282. Subsection (7) allows the undertaker to recover from the licensee certain expenses incurred in taking the steps referred to in subsection (2) even if the undertaker was not able to make the supply because it could not obtain necessary authorisations or agreements. For example, if the undertaker failed to obtain

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necessary permissions to lay pipes, it would nevertheless be able to recover the cost of attempting to do so.

283. *New section 66B* sets out the conditions on which water undertakers are required to allow licensed water suppliers holding a combined licence to introduce water to their supply systems.

284. Subsection (1) limits the duty to cases where a request for introduction of water to the supply system is in connection with a specific supply to a customer under the licensed water supplier's retail authorisation. In reality, the water introduced by the combined licensee, having mixed with other water in the undertaker's pipes etc. will not necessarily be the same water that arrives at the customer's premises. In addition, the licensed water supplier's customer must be within the undertaker's appointed area.

285. Subsection (2) provides that the undertaker will also be under this duty where it has agreed (outside the competition provisions in these sections) to treat a licensed water supplier's water so that it can be introduced into the supply system and, in connection with that introduction, the licensed water supplier requests that the undertaker permit the licensee to then introduce water into the supply system for supply to its customers.

286. Subsection (3) places a duty on a water undertaker who receives a request under section 66B to take steps to permit the introduction of water into its supply system and to permit the introduction on certain terms agreed with the supplier or determined by the Authority. These steps may include laying a pipe to connect the licensed water supplier's treatment works (or source in the case of non-potable supply) with the undertaker's supply system. The steps also include making a connection to the customer where required.

287. The duty to provide a supply does not apply if certain conditions are satisfied. Undertakers may refuse a request made by a licensed water supplier for the introduction of water, if this would put at risk specified obligations or in certain circumstances would require unreasonable expenditure in carrying out works. Therefore, undertakers have to be satisfied that any access agreement with a licensee will ensure that appropriate safeguards are put in place in a range of areas. This will include for example water quality matters; undertakers will have to be satisfied that any proposed actions of a licensed water supplier will not adversely affect the quality of water supplied.

288. The duty also does not apply if connecting the premises of the licensed water supplier's customer would result in a contravention of regulations made under section 74 of the Water Industry Act 1991.

289. Subsection (7) allows the undertaker to recover from the licensed water supplier certain expense in taking the steps referred to in subsection (3), even where the undertaker was not able to make the supply because it could not obtain necessary authorities and agreements (in the same way as sections 66A(7) and 66C(7)).

290. Subsections (9) and (10) allows the Secretary of State (after consultation with the Assembly) to publish a list of treatment works used by licensed suppliers to treat

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water introduced into the supply system (this is separate to the list of undertakers' treatment works referred to in section 17B(6)). The designation is relevant to undertakers' obligations to take steps to permit the introduction of water into their systems. The duty to take steps in relation to potable networks includes laying pipes to the licensee's treatment works.

291. *New section 66C* sets out the conditions under which an undertaker ('the secondary undertaker') may be required to provide water supplies to licensed water suppliers for the purpose of them supplying water to their customers using the supply system of another undertaker (the primary undertaker) to which the licensee's customers are connected and the conditions under which the primary undertaker may be required to permit the introduction of that water.

292. Subsection (2)(a) places a duty on the secondary undertaker, when requested by a licensed water supplier, to take steps to enable the supply to be made to the licensee and to provide that supply on certain terms agreed between them or determined by the Authority.

293. Subsection (2)(b) places a duty on the primary water undertaker, when requested by a licensed water supplier, to take steps to permit the introduction of the water into its supply system on certain terms agreed, or determined by the Authority. These steps are likely to include, if no appropriate cross-border pipe is already available, laying a pipe to the secondary undertaker's supply system, making the appropriate connections and allowing introduction of the water. The steps also include making a connection to the customer where appropriate.

294. Subsections (4) to (6) set out conditions under which the secondary and primary undertakers may refuse a request by a licensed water supplier to supply water and permit the introduction of that water into the supply system. The duty on both will not apply if either or both of the conditions are satisfied. The duty does not apply if connecting the premises of the licensee's customer would result in a contravention of regulations made under section 74 of the Water Industry Act. This would only affect the primary undertaker's system, but if it does, the secondary undertaker is not under a duty to supply. Neither undertaker will be under a duty if complying with the request would put at risk specified obligations or, in certain circumstances, would require them to incur unreasonable expenditure in carrying out works).

295. Subsection (7) allows either undertaker to recover from the licensee, certain expenses in taking the steps referred to in subsection (2) even where the undertaker was not able to make the supply because it could not obtain necessary authorities and agreements (in the same way as in section 66A(7) and 66B(7)).

296. *New section 66D* determines or provides for the determination of certain matters in relation to the requirements of 66A to 66C.

297. Subsection (1) allows licensed water suppliers to seek a determination from the Authority as to whether a refusal on the part of an undertaker to provide a wholesale supply or permit the introduction of water into its supply system on the grounds of the relevant conditions set out in sections 66A to 66C is justified.

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298. Subsection (2) provides that a water undertaker's duties under 66A to 66C shall be performed as agreed between the undertaker (or undertakers in the case of section 66C) and licensed water supplier (subject to the other provisions in section 66D, and sections 66E and 66F) or in the absence of agreement, as determined by the Authority. Where the undertaker and licensed water supplier are unable to come to an agreement, the licensed water supplier may ask the Authority for a determination. In this case, the Authority will determine the terms and conditions to apply, and this will form the contract between the parties.

299. Subsection (3) requires the charges payable by licensed water suppliers under the agreement or determination mentioned above to be fixed in accordance with the costs principle set out in section 66E.

300. Subsection (4) requires the Authority to issue guidance on the terms and conditions of agreements mentioned above, including the fixing of charges, between undertakers and licensed water suppliers. This guidance will be binding on undertakers and licensed water suppliers.

301. Subsections (7) and (8) allow the Authority to require the parties to modify or terminate agreements which are not made in accordance with the guidance or the costs principle referred to section 66E. This requirement is enforceable against parties using the section 18 machinery.

302. Subsections (9) and (10) prevent the Authority from exercising its Competition Act 1998 powers to modify agreements which are contrary to the Chapter I prohibition in that Act.

303. *New section 66E* sets out the costs principle referred to in section 66D.

304. Subsection (1) set out the basics of the costs principle. Undertakers are to recover from licensed water suppliers two elements of cost to the extent that those sums exceed any financial benefits the undertaker receives as a result of the supplier using the system to supply its customers. First, the direct costs of providing any wholesale supply to a licensed water supplier or permitting the introduction of water into the supply system. Second, an appropriate amount (defined in subsection (3)) of qualifying expenses (defined in subsection (2)) together with a reasonable return.

305. Subsection (2) defines qualifying expenses as all of the expenses that an undertaker incurs (or has incurred) in performing its statutory functions. This definition therefore includes both historical and future costs.

306. Subsections (3) and (4) define the appropriate amount referred to in subsection (1)(b) as the expenses which the undertaker would have ordinarily recovered from its customers if they had not been supplied by a licensed water supplier. However, any costs that the undertaker can reduce or avoid are not included in this amount.

307. It is possible that, as a result of a licensed water supplier supplying its customers, the undertaker receives some financial benefit. To the extent that there are any such benefits, these are deducted from the two elements of cost set out in subsection (1).

308. *Section 66F* provides supplementary provisions to section 66D.

*These notes refer to the Water Act 2003 (c.37)
which received Royal Assent on 20th November 2003*

309. Subsections (1) and (2) require the Authority, before making a determination under sections 66D(1) or (2), (either in relation to the satisfaction of conditions or the terms and conditions on which a supply is to take place) to consult the Secretary of State (in the shape of the Drinking Water Inspectorate which exercises drinking water functions on his behalf) where water is being introduced to a supply system (section 66B or section 66C cases) and the Environment Agency where water is being transferred from one area to another (section 66C cases).

310. Subsections (3) and (4) provide which is the appropriate body to consult depending on whether the undertaker is or (in the case of a supply under section 66C) undertakers concerned are located in England or Wales. The Assembly is consulted in relation to supplies made using supply systems of undertakers whose areas are wholly or mainly located in Wales. The Secretary of State is consulted in relation to supplies made using the supply systems of all other undertakers. Both are consulted in a cross border supply case where the two undertakers concerned are not wholly or mainly in the same country (i.e. one is mainly in Wales and the other in England).

311. Subsections (5) to (8) require the Authority to publish its guidance relating to the terms and conditions of agreements referred to in section 66D and to consult such persons as it considers appropriate before it issues or revises such guidance.

312. Subsection (10) provides for any terms and conditions determined by the Authority under section 66D to be treated as if they had been agreed between the parties.

313. *New section 66G* sets out the requirement for the Authority to designate certain introductions of water by licensees as strategic supplies. These are an introduction if water without which there would be a substantial risk that the undertaker would not be able to maintain supplies to its own customers and make supplies for domestic purposes to licensed water supplier's customers. The significance of this designation is that the licensed supplier will be subject to the special administration procedures in sections 23 to 26 of the Water Industry Act.

314. Subsections (1) to (8) allow the undertaker to request that the Authority determines that an introduction of water constitutes a strategic supply, if it believes it to be such. The Authority may also propose to make such a determination without any such request. The Authority shall inform the Secretary of State, the Assembly, and other such other persons, as it considers appropriate of the request or any proposed determination and shall indicate the time within which representations may be made.

315. *New section 66H* covers the situation where a supplier is making two or more introductions of water which, taken together would amount to a strategic supply (though they would not be strategic if taken separately).

316. *New section 66I* makes it an offence to use an undertaker's system to supply the premises of a customer, unless the supply is made by the water undertaker or a licensed water supplier in pursuance of its licence. The Secretary of State or the Assembly (in relation to systems of undertakers wholly or mainly in Wales), or the Authority, may instigate proceedings and a person found guilty may be fined, and any agreement which is found to contravene this prohibition will be void.

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which received Royal Assent on 20th November 2003*

317. Subsections (3) and (8) give the Secretary of State, or the Assembly in relation to systems of undertakers wholly or mainly in Wales, the power to specify circumstances where the prohibition shall not apply. This would be used to except an activity that would otherwise be an offence, and might be used where it was found that the prohibition had unintentionally caught a particular activity.

318. *New section 66J* makes it an offence to introduce water into a water undertaker's supply system, except for the introduction by a licensed water supplier in pursuance of its licence, or by another water undertaker under an agreement for a bulk supply. Proceedings in respect of such an offence may be instigated by the Secretary of State, the Assembly in relation to supply systems of undertakers wholly or mainly in Wales or the Authority and a person found guilty on conviction or indictment may be imprisoned for up to two years, or fined (on summary conviction this may be up to £20,000). Any agreement found to contravene this prohibition will be void. As for section 66I, the Secretary of State, and the Assembly (in relation to supply systems of undertakers whose areas are wholly or mainly in Wales), has the power to specify further circumstances where the prohibition shall not apply.

319. *New section 66K* provides for the Secretary of State, by statutory instrument following the negative procedure, or the Assembly in relation to supply systems of undertakers wholly or mainly in Wales (under new section 66L(7) and (8)), to grant exemptions to sections 66I and 66J above. The activities will continue to be prohibited generally, but a person or class of person is exempted, perhaps subject to conditions. This might be used in a case in which a person is carrying out one or more of the activities for which a licence would normally be required but where licensing would be unnecessarily onerous, or where a person was found to have been unintentionally caught by the legislation.

320. Subsections (1) to (5) provide for the Secretary of State or the Assembly to consult on an order granting exemptions to individuals or to classes of people, setting out the reasons for the order and terms proposed, and allowing not less than 28 days for representations. An exemption for a particular person must be notified by the serving of a copy on that person, as well as more widely publishing it; exemptions for classes of people must be published to bring it to the attention of persons of that class as well as others who might be affected.

321. An exemption may be granted for a specific period or indefinitely, and it can include conditions which allow the Secretary of State, the Assembly, or the Authority to require any exempted person to comply with particular directions or gain consents or determinations from those bodies.

322. *New section 66L* allows the Secretary of State, by order made by statutory instrument following the negative procedure or the Assembly (in relation to systems of undertakers wholly or mainly in Wales) to vary an order which granted an exemption, or terminate any exemptions, on request of the person to whom it applied (in the case of withdrawing an exemption granted to a person, or in the case of withdrawing an exemption granted to persons of a class, from any person of that class) in accordance with a provision in the order, or if it appears to him or it inappropriate to continue on the current terms.

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323. The Secretary of State or the Assembly must consult the Authority and give notice of its proposals, with a period for representations, by, as appropriate, serving a copy of the notice on the person to whom the exemption was granted, or bringing it to the attention of those in the class of persons exempted, or that person within the class to whom the proposed order applies.

324. Paragraph 4 of the Schedule allows the Authority to modify the conditions of appointment of a water undertaker where it considers it necessary or expedient in consequence of the amendments to the Water Industry Act made by this Schedule and Schedule 8. The Authority may also make incidental or consequential modifications of other conditions of appointments which it believes necessary.

325. Before making such modifications the Authority has to consult the company holding the appointment and anyone else it considers appropriate. The Secretary of State can give directions to the Authority in order to ensure that the conditions of appointment are modified in consequence of the amendments made to the Water Industry Act.

326. The powers of the Authority to make such modifications are time limited to a period of two years beginning with the first day of commencement of all of Schedule 4 and Schedule 8.

PART 3: MISCELLANEOUS

Section 57 The Drinking Water Inspectorate

327. *Section 57: The Chief Inspector of Drinking Water and the Drinking Water Inspectorate.*

This section amends section 86 of the WIA which enables the Secretary of State to appoint persons to act as what are currently described as “technical assessors” for the enforcement of water quality. The amendments reflect the fact that such assessors are more generally known as the Drinking Water Inspectorate.

328. Subsection (3) enables the Secretary of State to designate one inspector as the Chief Inspector of Drinking Water; for the Assembly to designate a Chief Inspector of Drinking Water for Wales if the relevant functions are transferred to the Assembly (by virtue of the Transfer of Functions Order); and, where the same person is designated to act in both capacities, for that person to be known as the Chief Inspector of Drinking Water.

329. Subsection (7) increases from £5,000 to £20,000 the maximum penalty available in the magistrates’ court for the offence of failing to provide inspectors with assistance or information, and enables cases to be brought on indictment before the Crown Court, where the offence is punishable by a fine.

330. Subsection (8) enables the Chief Inspector of Drinking Water to institute prosecutions, in relation to drinking water quality, in his or her own name, and this also applies to the Chief Inspector of Drinking Water for Wales.

*These notes refer to the Water Act 2003 (c.37)
which received Royal Assent on 20th November 2003*

Section 58 Water fluoridation

331. Section 58: Fluoridation of water supplies.

The current provisions within section 87 to 91 of WIA allow health authorities to request water undertakers to fluoridate water supplies but place no duty on water undertakers to accede to such requests. This section replaces sections 87 and 89 to 91 of the WIA (fluoridation of water supplies at the request of health authorities). These provide for fluoridation of water supplies where Strategic Health Authorities (in relation to England) and the Assembly (in relation to Wales) make arrangements with undertakers.

332. New section 87 puts water undertakers under a new statutory obligation to accede to requests from Strategic Health Authorities (in relation to England) and the Assembly (in relation to Wales) to enter into arrangements to fluoridate water supplies. Water undertakers are not required to enter into arrangements unless an indemnity under new section 90 has been given.

333. New subsection 87(7) provides that the relevant authority shall consult with the Water Services Regulation Authority in relation to the terms to be included in the agreement, particularly those which affect the operation of the water undertaker's supply system. New subsection (8) requires that where, for example, a water distribution system overlaps the boundaries of two adjoining SHAs, they co-operate in making arrangements to fluoridate with a water undertaker.

334. New section 87A(1) restates that the concentration of fluoride in the water supply shall be maintained at a target concentration of one milligram per litre. New subsections (2) to (5) provide for SHAs or the Assembly to make arrangements for a lower concentration where it is not technically practical to achieve one milligram per litre.

335. New section 87B introduces provision for determination of terms, where the relevant authority and a water undertaker fail to agree the terms of an arrangement to fluoridate.

336. New section 87C(2) restates the two chemical compounds which are permitted to be used in fluoridating water supplies. Subsections (3) and (4) allow water companies to supply fluoridated water in areas not covered by arrangements under section 87 where it is necessary to do so due to operational constraints, such as dealing with serious deficiency in supply.

337. New section 88A introduces new regulation making powers for the Secretary of State (and the National Assembly for Wales) to reduce the target concentration of fluoride to below one milligram per litre. This might be appropriate if, for example, it was found that as a result of increased use of discretionary fluorides like toothpaste, the desired reductions in tooth decay could be achieved at lower concentrations of fluoride in the water supply. Reductions may apply nationally or to a particular region.

338. New section 89 provides for consultations. It introduces new regulation making powers for the Secretary of State (and the National Assembly for Wales) to make regulations on the consultation process which relevant authorities will have to

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follow before requesting water undertakers to enter into arrangements or varying or terminating them.

339. New section 90 provides for the Secretary of State (with the consent of the Treasury) and the National Assembly for Wales, to indemnify water undertakers and licensed water suppliers in respect of liabilities which they may incur in complying with the arrangements for fluoridation and introduces a new regulation making power enabling the Secretary of State (and the National Assembly for Wales) to make provision in relation to the matters in respect of which an indemnity may be given and the forms and terms of such indemnity.

340. New subsection 90A requires SHAs with fluoridation schemes to monitor their effects on the health of their populations and publish reports on their findings at four yearly intervals.

341. New section 91 (1)-(6) provides for the existing pre-1985 fluoridation schemes to be treated as if they been established under the amended Act except that the consultations required on proposals for new fluoridation schemes do not apply to them. Subsection (9) repeals the provisions of section 91 of the WIA and Schedule 7 to the WIA that related to pre-1985 fluoridation schemes. Subsection (10) is a consequential provision providing for amendments to the WIA to be reflected in the Water Fluoridation Act 1985 which is still in force in Scotland. (The Scottish Parliament would be responsible for any wider changes to the legislation governing fluoridation in Scotland). Subsections (11) to (14) provide that certain outstanding applications made by health authorities to water companies to fluoridate their water be treated as requests under new section 87(1) of the WIA.

Section 59 Water resale

342. *Section 59: Charges for services provided with the help of an undertaker*

This section gives the Authority the power to offer greater financial protection to persons paying for water or sewerage services provided with the help of (but not by) a water or sewerage undertaker. This brings the protection that may be offered to these customers closer into line with that offered to customers in the case of the resale of gas and electricity.

343. The Director has existing powers to make an order fixing maximum charges for water resale in section 150 of the Water Industry Act 1991. The section adds further powers:

- to order that interest be recoverable on any excess charge that is to be repaid and, if he exercises this power, to specify or describe the rate of interest;
- to require any person providing water supplies or sewerage services with the help of an undertaker to provide specified or described information to the person who pays the charges; and
- to specify a maximum price or to specify an amount or percentage reduction in the maximum price to apply in the event of failure to give information as required by an order.

344. Provisions in this section are devolved to the Assembly.

*These notes refer to the Water Act 2003 (c.37)
which received Royal Assent on 20th November 2003*

Sections 60 to 61 Penalties

345. ***Section 60: Abstraction and impounding offences.***

This section amends sections 24(5)(a) and 25(3)(a) of the WRA so that the maximum penalty available to a magistrate's court for offences of abstracting or impounding water without a licence where one is needed, or doing so in contravention of a licence condition, is increased from £5,000 to £20,000. Proceedings can also be brought in the Crown Court, where the penalty on conviction would be an unlimited fine.

346. Provisions in this section are devolved to the Assembly.

347. ***Section 61: Supplying water unfit for human consumption.***

This section increases from £5,000 to £20,000 the maximum penalty available to a magistrates' court for the offence created under section 70(1) of the WIA where a water undertaker supplies "water by means of pipes to any premises and that water is unfit for human consumption". Proceedings can also be brought in the Crown Court, where the penalty on conviction would be an unlimited fine. This offence is also extended to other persons under paragraph 20 of Schedule 8 to the Act.

348. Provisions in this section are devolved to the Assembly.

Section 62 Water resources management plans

349. ***Section 62: Water resources management plans.***

This section places water undertakers under a duty to produce water resources management plans and to publish and consult upon those plans. The duty requires that undertakers plan for demand in the medium and long term and for how to meet that demand. Water resource management plans will be subject to annual review and have to be revised every five years, or in any case where the annual review indicates a material change in circumstances or the Secretary of State directs that a revised draft should be prepared. There are powers for the Secretary of State (or the Assembly) to prescribe in a direction the matters that plans must address and the form that they are to take. Licensees (i.e. new entrants to the competitive regime for the supply of water) have to provide information required by undertakers to prepare their plans. The section also sets out the procedures for publication and consultation that must be followed in the production of these plans.

350. Provisions in this section are devolved to the Assembly.

Sections 63 to 65 Drought

351. Provisions in sections 63 to 65 are devolved to the Assembly.

352. ***Section 63: Drought plans.***

Water undertakers are required to prepare, maintain and publish drought plans. A drought plan should set out how the undertaker will continue to meet its duties to supply adequate quantities of wholesome water during drought periods with as little recourse as possible to drought orders or drought permits. Drought plans must be revised every three years or if there is a material change in circumstances or the Secretary of State otherwise so directs. Licensees have to provide information

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required by undertakers to prepare their plans. The procedures for publication and consultation are the same as those for water resources management plans.

353. *Section 64: Drought orders and drought permits: charges.*

Current legislation allows a water company to apply to the EA for a drought permit where, by reason of an exceptional shortage of rain, a serious deficiency of water supplies exists. Similar powers enable an application to be made to the Secretary of State/National Assembly for a drought order. A drought order or permit allows a water company to meet that deficiency by allowing it to abstract more water from existing and additional sources. This section enables the Agency to recover from a water company any expenses it incurs in connection with any application by that company for a drought order or permit, including those relating to any local inquiry that is held, and in connection with any such order or permit if it is subsequently issued. This may include, for example, costs of additional environmental monitoring to establish the effects of the permit or order. The section also repeals sections 77(4) and 79A(8) of the WRA to make it clear that sections 125 to 129 do not apply to these charges.

354. *Section 65: Procedure at local inquiries.*

Where there has been an exceptional shortage of rain causing a serious deficiency in water supplies then, under present arrangements, any water company or the EA can apply to the Secretary of State for a drought order. The Secretary of State may direct that a public inquiry be held into such an application.

355. The Local Government Act 1972 sets certain rules about the attendance of witnesses and the awarding of costs for inquiries. This section applies those rules in respect of the conduct of inquiries into drought orders.

Sections 66 to 69 Land drainage and flood defence

356. *Section 66: Revocation of local flood defence schemes.*

This inserts a new section 18A into the Environment Act 1995 (which extends to the whole of Great Britain) to enable the Minister, by order made by statutory instrument, to revoke any local flood defence scheme and make provision for supplementary purposes. These include altering the number of members of the regional flood defence committee in whose area the local flood defence scheme was situated, and adjusting the members appointed by constituent councils to the regional committee.

357. Provisions in this section are devolved to the Assembly.

358. *Section 67: Membership of regional flood defence committees in Wales.*

This section inserts new sections 16A and 16B into the Environment Act 1995. New section 16A enables the National Assembly for Wales, by order made by statutory instrument, to make provision determining the total number of members, and the method of selection and appointment of the chairman and other members of Welsh regional flood defence committees, and to make provision for such supplementary purposes as the National Assembly for Wales considers appropriate. Where a Welsh Committee is not wholly in Wales then this power may only be exercised with the agreement of the Secretary of State. New section 16B disapplies the provisions of

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sections 15, 16 and 18A(3) of the Environment Act 1995 (which make provision as to the membership of regional flood defence committees) where an order under section 16A is in force. It also ensures, by modifying section 18 and Schedule 5 of the Act, that the composition of local and regional committees is not incompatible in such circumstances.

359. *Section 68: Regional flood defence communities.*

This section amends paragraph 1 of Schedule 4 to the Environment Act 1995 to enable the relevant Minister to make orders which establish a new regional flood defence committee for such area as may be specified in the order, or to abolish a regional flood defence committee.

360. Taken together, sections 66 and 68 enable Ministers to abolish some or all of the present local flood defence committees in order to establish a single tier of regional flood defence committee in that region. Orders abolishing the local committees may adjust the membership of the “parent” regional flood defence committee. They also provide powers to create new and additional regional committees and abolish existing regional committees. Paragraphs 2 to 6 of Schedule 4 to the 1995 Act set out the procedures for making orders under that Schedule, including those under the extended paragraph 1. These procedures are also being applied to orders under the new section 18A.

361. Provisions in this section are devolved to the Assembly, and the power to establish or abolish a regional flood defence committee, part but not all of which is in Wales, is exercisable by the Secretary of State and the Assembly acting jointly.

362. *Section 69: Grants for drainage works and flood warning systems.*

Ministers currently make grants to the EA for drainage (which includes flood defence) and flood warning purposes under sections 147-149 of the WRA 1991. Those powers require each project to be approved individually; it is not open to Ministers to make block grants to the Agency for these purposes. A general power for Ministers to make grants to the Agency exists under section 47 of the Environment Act 1995 but the existence of the specific powers in sections 147-149 of the 1991 Act may give rise to uncertainty as to whether the general power is intended to be capable of being used to make block grants to the Agency for drainage or flood warning purposes. This section therefore repeals sections 147-149 so as to remove any doubt that drainage and flood warning grants to the Agency may be paid under section 47 of 1995 Act (with the agreement of the Treasury). The section makes consequential amendments to sections 165(4), 166(4) and 221(1) of the WRA which refer to the repealed provisions. The Land Drainage (Grants) Regulations 1967 will automatically lapse with the repeal of these sections.

363. Provisions in this section are devolved to the Assembly.

Section 70 Information

364. *Section 70: Information.*

This section amends the WRA to strengthen the Agency’s powers to require information about abstractions, impounding and any related matters, in support of its

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water resource management functions. For abstractions or applications to abstract, or the transfer or apportionment of a licence, this includes information on the abstraction and the use of the water to be abstracted. For impounding or applications to impound, this includes the impoundment and the way in which it is operated. This will bring the existing powers to require information with respect to any abstraction in line with existing powers to seek information in connection with the control of pollution. The penalty for non-compliance is increased.

365. Provisions in this section are devolved to the Assembly.

Section 71 Powers of entry

366. *Section 71: Extension of Environment Agency's powers of entry.*

Existing legislation provides the EA with powers of entry to premises to carry out inspections to confirm that all legislative requirements are being complied with. These powers are wider in respect of the Agency's water pollution functions, where they allow the installation of monitoring and other apparatus and the carrying out of experimental borings or other works. This section extends these wider powers to all of the Agency's functions.

367. Provisions in this section are devolved to the Assembly.

Section 72 Environment Agency's general water resources duty

368. *Section 72: Efficient use of water resources.*

Under the provisions of the Environment Act 1995 the Environment Agency has a general duty to secure the proper use of water resources in England and Wales. This section makes it clear that this includes a duty to secure the efficient use of those water resources.

369. Provisions in this section are devolved to the Assembly.

Section 73 Border rivers

370. *Section 73: Border rivers.*

The Agency's abstraction and impoundment regulatory controls do not apply to certain rivers and their tributaries on the border between England and Scotland. The waters concerned include the River Tweed, which because of its definition includes the River Till situated largely in England, and the Rivers Esk and Sark and certain of their tributaries. The section amends the WRA to apply these controls in the English parts of those river catchments.

Sections 74 to 80 Reservoirs

371. These sections amend the Reservoirs Act 1975. The provisions of the Reservoirs Act 1975 are devolved to the Assembly, except the new section 12A(4) introduced by section 77 of this Act, which deals with public safety for England.

372. *Section 74: Environment Agency to be enforcement authority under the Reservoirs Act 1975.*

Enforcement within England and Wales of the provisions of the Reservoirs Act 1975 (which covers the whole of Great Britain) currently falls to some 140 local authorities.

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This section transfers enforcement functions in relation to England and Wales to a single body, the EA.

373. *Section 75: Extension of enforcement authority's reserve powers.*

Enforcement authorities have reserve powers that may be used in certain circumstances where reservoir undertakers have failed to comply with their responsibilities under the 1975 Act. For example, these powers may be used where, having failed to comply with a notice served by the authority, the undertaker refuses to implement recommendations made by a panel engineer in the interests of safety. This section enables the enforcement authority to step in and arrange for the works to be executed and to charge the costs of doing so to the undertaker. The reserve powers are not presently available in respect of reservoirs that are under construction or being enlarged and this section extends the power to encompass such cases. This section applies in England and Wales.

374. *Section 76: Service of documents.*

The amendments made by this section are consequential on provisions made by section 71.

375. *Section 77: Flood plans: large raised reservoirs.*

The Reservoirs Act 1975 makes provision in respect of escapes of water from large raised reservoirs. The emphasis of the current legislation is on prevention of escapes. But with uncertainties over the future implications of climate change and rainfall patterns further flexibility within this safety legislation, in the Government's view, should be available. Some reservoir owners already prepare flood plans voluntarily. This section enables the Secretary of State, after consultation with all interested parties, to issue a direction to the owner of a large raised reservoir in England or Wales requiring the preparation and dissemination of such a plan. Under section 77(4), the Secretary of State may also issue directions to reservoir undertakers in Wales where the Assembly has not itself done so but where it is considered necessary in the interests of public safety in England.

376. *Section 78-79: National security and offences.*

This section provides for the exclusion from the registers, maintained under section 2 of the 1975 Act of information that is prejudicial to the interests of national security. It also imposes restrictions on consultation and publication arrangements in section 77 where the Secretary of State (or Assembly) considers it necessary to do so in the interests of national security. The restrictions on publication may extend to flood plans other than those prepared under section 77 and restrictions may also limit access to any flood plans. Failure by an undertaker to comply with a notice issued under this section will be a criminal offence (under section 79).

377. *Section 80: Crown application.*

Although exempt from the provisions of the 1975 Act, Crown bodies have acted as though bound by the Act. This section formally extends the Act to the Crown in England and Wales.

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which received Royal Assent on 20th November 2003*

Sections 81 to 83 Water conservation

378. Provisions in sections 81 to 83 are devolved to the Assembly.

379. ***Section 81: Duty to encourage water conservation.***

This section places a new duty on the Secretary of State to take appropriate steps to encourage water conservation and report to Parliament on progress every three years. This new duty will give statutory effect to a number of existing discretionary measures and encourage new initiatives to further water conservation. A similar duty will apply to the National Assembly of Wales.

380. ***Section 82: Water conservation: requirements on relevant undertakers.***

This section amends the WIA, adding to water undertakers' general environmental duties in relation to their functions the duty to further water conservation. The new duty applies when undertakers formulate or consider any proposals relating to any of their functions.

381. ***Section 83: Water conservation by public authorities.***

This section requires all public authorities, as defined in the section, to take into account, where relevant, the desirability of conserving water supplied to premises. This applies to both their actual use of water and where their functions might have an impact on water use. This is not intended to restrict justifiable water use, but to ensure consideration of water conservation in the development of policies and activities.

Section 84 Fire hydrants

382. ***Section 84: Fire hydrants.***

This section amends section 57 of the WIA. Subsection (1) adds a new subsection 4A to section 57 of the 1991 Act and makes water companies (rather than Fire Authorities) liable for the cost of replacing fire hydrants that they remove when renewing or renovating water mains.

383. *Subsection (2)* adds a new subsection 4A to section 58 of the 1991 Act and makes water companies (rather than the owners of businesses or factories) liable for the cost of replacing fire hydrants that they remove when renewing or renovating water mains.

384. Provisions under this section are devolved to the Assembly.

Section 85: Coal mine water pollution

385. ***Section 85: Control of water from coal mines.***

This section amends the Coal Industry Act 1994 in respect of England and Wales. Preventing and cleaning-up coal mine water pollution from abandoned mines is a major environmental activity for the Coal Authority which has been running for a number of years. The programme has been run on a non-statutory basis and receives funding from the DTI.

386. In view of the increasing expenditure on this programme it is, in the Government's view, important that the programme should be put on a statutory basis.

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387. Section 85 therefore provides the Coal Authority with statutory powers to prevent and control water emanating onto land or into any controlled waters from abandoned coal mines which are vested in it. In this respect, controlled waters means any rivers, estuaries, coastal waters or groundwaters.

388. In addition to the powers to prevent or control water emanating from abandoned coal mines, this section gives the Coal Authority powers to enter land to drill boreholes and install monitoring and other equipment. This will allow the Coal Authority to investigate and deal with any polluting water from coal mines that poses a serious threat to the environment or human health. Powers are also provided for the Coal Authority to compulsorily buy land to prevent or treat water pollution from abandoned coal mines.

389. These statutory powers build upon the existing provisions of the Coal Authority's founding legislation, the Coal Industry Act 1994. As the Authority's minewater programme already exists, the work of the Environment Agency, which operates under pollution control powers in the WRA, is unaffected by this change.

390. While the Coal Authority's powers are similar to those of the EA they work independently. Notwithstanding, a memorandum of understanding exists between the two organisations which sets out the mechanics of tackling coal minewater discharges and ensures that the EA is kept fully informed of the Coal Authority's activities.

Section 86 Contaminated land

391. *Section 86: Contaminated land: pollution of controlled waters.*

A regime for identifying and dealing with land contamination causing unacceptable risks to human health and the environment was introduced in England in 2000 (in Wales, 2001). Local authorities are under a duty to identify such land and secure its remediation, subject to detailed rules. This includes land in such a condition that pollution of controlled waters is being caused. It became clear that this could include some very minor cases, resulting in an inconsistent approach as between land and water in relation to the degree of risk being addressed by the regime.

392. To resolve this difficulty, this section amends the second limb of the definition of "contaminated land" in Section 78A of the Environmental Protection Act 1990 so that it applies only where significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused. It also provides powers for the Secretary of State to issue guidance on the amended definition and alters the position of "ground waters" in relation to the term "pollution of controlled waters".

393. Provisions under this section are devolved to the Assembly.

Section 87 Discharge consents

394. *Section 87: Transfer of discharge consents.*

It is an offence under the WRA to discharge sewage or trade effluent into controlled waters (i.e. rivers, estuarial, coastal or groundwaters) without permission from the EA.

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395. Anyone wishing to discharge effluent into controlled waters in England and Wales must therefore first make an application to the EA. The EA carries out a statutory application process which involves public newspaper advertising and consultation before it considers whether or not to approve an application.

396. If the EA decides to approve an application it may issue a discharge consent which sets out the terms of the discharge. In addition, each discharge consent will contain a number of specific conditions which the consent holder must meet. Failure to meet the terms of the consent or any of the conditions is a breach of consent and could lead to enforcement action by the EA.

397. The legislation includes provisions which allow the transfer of a discharge consent to another person who proposes to carry on the discharge in place of the existing holder. This is to cover situations where, for example, ownership of a factory may have changed hands, but the manufacturing process remains the same, as does the nature of the discharge.

498. The EA has encountered some difficulties in registering these transfers due to the lack of a statutory procedure.

399. This section amends paragraph 11 of Schedule 10 to the WRA and provides for a joint notice procedure, including any prescribed information and that if notice is duly given, the Agency shall effect the transfer.

400. Schedule 10 to the WRA also contains provisions which set out the position on the transfer of a consent where death of the consent holder occurs, or where the consent holder becomes insolvent or bankrupt and action is taken against them. In its present form, paragraph 11 of Schedule 10 provides that consents cannot be disclaimed. This section serves no useful purpose since the Agency already has appropriate powers to deal with any problems that might arise either as a breach of conditions or if an illegal discharge is made. This section therefore also repeals paragraph 11(4) of Schedule 10.

401. Provisions under this section are devolved to the Assembly.

Sections 88 to 89 Trade effluent consents

402. Provisions in sections 88 to 89 are devolved to the Assembly.

403. *Sections 88 and 89: Trade effluent consents.*

The discharge of trade effluent into public sewers is regulated under the WIA. An occupier of trade premises requires a trade effluent consent before he may discharge trade effluent into the public sewer. He must therefore apply to his sewerage undertaker (water and sewerage company) who will consider the application and issue a trade effluent consent if they are content to do so. Trade effluent consents specify what may be discharged to sewer and contain conditions which the discharger must meet to comply with his consent.

404. From time to time confusion arises as to whether discharges arising from particular types of activity are required to be regulated under the trade effluent consenting regime. Often these discharges are small in volume, but a large quantity of such discharges could potentially be harmful to the environment. Sometimes it has

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proved difficult for sewerage undertakers to decide whether a discharge constitutes “trade effluent” and this has led to inconsistency within the consenting regime.

405. Where this has occurred in the past, the problem has been overcome by amending the primary legislation in order to make it clear that effluent emanating from a specified trade required a trade effluent consent. However, this process whilst dealing with the immediate problem has not proved to be a satisfactory long term answer to this problem and remains a somewhat inflexible approach to take.

406. A power is provided to the Secretary of State to make it clear by statutory instrument whether discharges of any given liquid or matter (whether or not constituting trade effluent) to the public sewer are or are not required to be carried on in accordance with the conditions of a trade effluent consent.

407. The Secretary of State has the power (in effect) to modify the meaning of ‘trade effluent’ and ‘trade premises’ for the purposes of the trade effluent consenting regime in the WIA. By using this power, the Secretary of State will be able to narrow or widen the scope of these expressions and in turn, make it clear whether discharges from particular processes, substances or types of activity to the public sewer are subject to the consenting regime.

408. The overall effect of these sections is intended to result in better regulation of the trade effluent discharge process by bringing under control the discharge of small volumes of potentially harmful substances to the water environment.

Sections 90 to 92 Water mains, etc

409. Sections 90 and 91 amend sections 42 – 44 of the WIA to enable the requisitioned costs of a water main to be paid by a single payment. The existing method of paying over 12 years is retained as an alternative (at the election of the person requisitioning the main).

410. Provisions in sections 90 to 92 are devolved to the Assembly.

411. *Section 90: Water main requisitions: financial conditions.*

This section amends section 42 of the WIA (financial conditions of compliance with water mains requisition) to enable the relevant deficit to be paid by a single payment. It also allows for disputes about requisition payments to be determined by the Authority.

412. *Section 91: Water main requisitions: calculations of payments.*

This section amends section 43 of the WIA (calculation of relevant deficit for the purpose of section 42) and is a consequence of the self lay provisions of water mains in section 92. It also provides a new section 43A which sets out how the discounted aggregate deficit will be calculated. This deficit is the estimated charge by customers over the following 12 years which are taken into account when calculating the single payment. It also makes minor amendments to section 44 of the WIA (determination of completion date and route for requisitioned main).

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413. ***Section 92: Self-lay and adoption of water mains and service pipes.***

This section provides five new sections 51A to 51E. New Section 51A sets out the steps and agreement that must be entered into by a developer or self lay organization proposing to construct domestic water mains or service pipes which are to be vested in the water undertaker. It provides that the main must be built in accordance with the agreement with the water undertaker to enable it to be adopted on completion. The provisions do not prevent agreements being entered into in relation to declarations of vesting for pipes used for non-domestic supplies.

414. New Section 51B sets out the situations where appeals can be made to the Authority if the undertaker refuses to enter into an adoption agreement on reasonable terms.

415. New section 51C provides that the person who enters into the adoption agreement relating to a water main shall pay the undertaker's reasonable costs of incorporating the water main within its existing water mains network. It also provides for an offset payment to be made by the undertaker to the developer or self lay organisation equivalent to the discounted estimated sum of water charges for the first twelve years in respect of premises expected to be connected to the new main.

416. New section 51D provides that if anyone other than a water undertaker builds a water main or service pipe which will be used for supplying water for domestic or food production purposes, the pipe must not be connected unless it vests in the undertaker.

417. New section 51E is supplementary to sections 51A to 51D and Subsections (2) to (7) make minor amendments to sections 45, 47, 179, 198 and 219 of the WIA.

Sections 93 to 99 Sewers and drains

418. Provisions in 93 to 99 are devolved to the Assembly.

419. ***Section 93: Requisition and adoption of sewers.***

This section amends section 99 of the WIA to allow the offset payment to be made as a single sum as an alternative to paying over 12 years. It also provides a new section 100A which sets out how the single sum should be calculated.

420. ***Section 94: Provision of public sewers otherwise than by requisition.***

Section 101A of the WIA imposes a duty on sewerage undertakers to provide a public sewer in certain circumstances to properties where the existing non-mains drainage arrangements is causing environmental or amenity problems. This was limited to buildings built before 20th June 1995. This section removes that cut-off date.

421. Sections 95 to 99 make provisions in relation to lateral drains. A lateral drain is that part of a drain which runs from the curtilage of the premises to the sewer. The provisions include for lateral drains to be requisitioned from the sewerage undertaker. Also, if they are to be constructed by someone else for adoption by the undertaker, an agreement should be entered into with the undertaker to ensure they are built to adoptable standards. They also provide for an inspection chamber to be constructed close to the curtilage of the property to define the demarcation between the lateral and

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the house drain. The chamber will also have to be constructed to the required standard for adoption by the sewerage undertaker.

422. *Section 95: Requisition of lateral drains.*

This section amends section 98 of the WIA (duty to comply with sewer requisition) to enable lateral drains to also be requisitioned from the sewerage undertaker.

423. *Section 96: Adoption of lateral drains.*

This section amends s104 of the WIA to enable lateral drains to be adopted by the sewerage undertaker if they have been constructed in accordance with an agreement with the undertaker. It also makes provision for an inspection chamber to be installed in the lateral drain at or near the point of connection between the lateral drain and the house drain at the curtilage of the property.

424. *Section 97: Requisitioning and adoption of lateral drains: supplementary.*

This section amends other relevant sections of the WIA and includes a definition of lateral drains.

425. *Section 98: Schemes for the adoption of sewers, lateral drains and sewage disposal works.*

This section provides for the Secretary of State to make regulations to place a duty on sewerage undertakers to exercise their existing powers, under Section 102 of the Water Industry Act 1991, to adopt private sewers under defined circumstances where certain criteria are satisfied. The circumstances and criteria will be set out in schemes made under the regulations.

426. *Section 99: Communications with public sewers.*

This section makes consequential amendments to section 106 of the WIA (right to communicate with public sewers) and in particular to subsection 4 to enable a request to communicate a lateral drain with the sewer to be refused if the standard of construction of the lateral is unreasonable.

PART 4: SUPPLEMENTARY

Sections 100 to 105

427. These sections deal with devolution and the transfer of functions under the Act to the National Assembly for Wales, consequential amendments, transitional provisions and powers to make orders and regulations, including providing for Schedule 7 and 8 to have effect. They also cite the name of this Act as the Water Act 2003 and set out its extent.

428. *Section 102: Specific transitional and transitory provisions.*

Section 102(1) provides that existing abstraction licences are treated as a full licence (see section 1). Section 102(2) provides that where an abstraction is no longer required to be licensed by virtue of the introduction of the new threshold in section 6, then a licence ceases to have effect for that abstraction.

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429. Section 102(3) provides that where an abstraction licence is no longer required by virtue of section 102(2) then the protected right associated with the abstraction continues. However, the protected right will lapse, under section 102(4), if no abstraction has been made for four years, unless the abstraction is planned to occur over longer intervals and the Agency agrees to a different period.

430. Section 102(5) allows the Agency to grant a licence to those abstractors being brought into the licensing regime for the first time even if that could derogate from the rights of other abstractors. It also allows the Secretary of State to make regulations to set aside provisions of other legislation that may preclude the grant of a licence to such abstractors.

431. Provisions in this section are devolved to the Assembly.

432. ***Section 103: Powers to make further supplementary, consequential and transitional provision, etc.***

This provision enables the Secretary of State to make such supplementary, incidental, consequential, transitory, transitional or saving provision as she considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act. This includes a power to amend primary legislation.

433. This power is necessary because the Act is complex. A wide range of consequential amendments to existing legislation and other supplementary, incidental and transitional provisions may be needed.

434. Provisions in this section are devolved to the Assembly.

435. ***Section 104: Regulations and orders.***

This section relates to the general form of instruments may be made under the Act, and purposes for which they may be exercised. For example, it provides that any power to make any order or regulations includes powers to make "such incidental, supplementary, consequential, saving or transitional provision (including provision amending, repealing or revoking enactments...)" as the authority doing so considers to be expedient. Instruments are generally subject to the negative procedure (section 103(3)).

436. Provisions in this section are devolved to the Assembly.

437. ***Section 105: Interpretation, commencement, short title, and extent.***

This section provides for most of the Act to come into force on such days as may be appointed. Different provisions may come into force on different days, and details of the authority with the power to commence the Act (for example, the Secretary of State or the National Assembly for Wales) are set out.

Schedule 7 Minor and consequential amendments

438. Part 1 of this Schedule makes a number of minor changes to the abstraction and impounding licensing regime. These include provision in paragraph 2 for the EA to require reports, such as an environmental report, to accompany a licence application. Provision is also made by paragraph 10 to end the current exemption from charges for groundwater abstractions for agricultural use (other than spray

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irrigation) of less than 20m³ per day (generally such abstractions will become exempt from licence control and hence also from charges). Paragraph 14 replaces Schedule 6 of the WRA, and by doing so allows only the Environment Agency to apply for Orders to vary abstraction thresholds (section 6) and to establish Registers of Protected rights (section 18). The revised Schedule retains the structure and consultation requirements of the original Schedule 6, and adds the nature conservation authorities and the Broads Authority (where appropriate) to the list of consultees.

439. Various provisions amended by this schedule are devolved to the Assembly.

Schedule 8 Minor and consequential amendments: licensing of water suppliers etc

440. Schedule 8 sets out minor and consequential amendments regarding licensing of water suppliers etc.

441. Section 174 of the Water Act 1989 applies a general restriction on disclosure of information obtained under that Act. The section is amended so that the restriction does not apply to disclosure for purposes of facilitating the carrying out of the duties of licensed water suppliers and in other limited circumstances.

442. In *section 6* of the WIA new subsection (5A) prevents a licensed water supplier from also holding an appointment as a water undertaker. This has the effect of not allowing undertakers to act as licensed water suppliers at the same time.

443. *Section 18* of the WIA is amended to include licensed water suppliers in orders for securing compliance. Amendment to subsection (1) means that breach of conditions of licence and other enforceable requirements will leave the licensee subject to enforcement action. The insertion of new subsection (1A) will provide for action where either an undertaker has caused or contributed, or is likely to cause or contribute, to a contravention by a licensee or vice versa. This allows enforcement action to be taken against undertakers which cause, or are likely to cause, licensed water suppliers to breach their licence conditions or statutory duties which are made subject to enforcement, or against licensed suppliers where they cause, or are likely to cause, an undertaker to breach its appointment conditions or statutory duties subject to enforcement.

444. Further minor amendments in this section achieve the same purpose as above; including licensed suppliers in the framework for provisional enforcement orders (subsection (4)) and explaining how enforcement orders operate (subsections (6) and (8)).

445. *Section 19* of the WIA: *Exceptions to the duty to enforce*; minor and consequential amendments to make provision for licensed water suppliers. This not only allows for the same exceptions for licensed water suppliers as undertakers where the contravention is trivial or the company is already complying etc. but will also make an exception where the extent of the contribution to the contravention was trivial.

446. *Section 20* of the WIA: *Procedure for making final enforcement orders*; minor and consequential amendments to make provision for licensed water suppliers and

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contributing to contravention. These ensure the new elements of enforcement are included in the Secretary of State's or Authority's notices.

447. *Section 22* of the WIA: Minor and consequential amendments to make provision for licensed water suppliers.

448. *Section 23* of the WIA: is amended and has insertions of subsections (2A) and (6). At present, there are various circumstances under which an undertaker may be placed in special administration. These include: becoming insolvent or being in contravention of a requirement so that it would be inappropriate for it to continue to hold an appointment. This amendment extends the existing special administration provisions to licensed water suppliers. The aim of a special administration order is to enable the activities of a licensed water supplier (holding a combined licence) to carry on in respect of its strategic supplies (as defined in section 66G/66H). When a licensed water supplier is put into special administration, the special administration order would make the continued input of water into the supply system one of its purposes. The order allows the input of water to carry on whilst arranging for transfer of those activities to another company or companies through the appointment of a special administrator.

449. *Section 24* is amended to explain the grounds on which special administration procedures can be invoked in relation to qualifying licensed water suppliers. These grounds include a breach of licence conditions or causing an undertaker to breach its duties (in both cases if this was serious enough to make it inappropriate for the licence holder to continue to hold its licence). The grounds to invoke special administration will also include serious financial difficulty or the company being about to be wound up.

450. *Section 27* of the WIA is amended so that, in addition to keeping the activities of undertakers under review, the Authority will also keep authorised activities of licensed water suppliers under review. This allows the Authority to gather information about licensed suppliers and to pass on relevant information and assistance to the Secretary of State and the Office of Fair Trading.

451. *Section 39A* of the WIA: Undertakers are already obliged to inform their customers about their standards of performance. The amendment of 39A ensures that the Authority can also direct undertakers to pass this information on to licensed suppliers who are using their systems to supply customers. In addition, the Authority can direct licensed suppliers to pass on the undertakers' information on standards of performance to their customers. This will enable customers to continue to be supplied with this information whether the undertaker or licensee is their supplier.

452. *Section 43*: Customers who requisition a new main in order to make a connection to their premises have to pay an amount known as the relevant deficit. This is defined in this section as the annual borrowing costs of the loan of the amount required to lay that main, minus the water charges payable in respect of that main. The latter amount is the charges paid by the undertaker's customer(s) supplied by that main. If one or more of the customers supplied by that main are subsequently supplied by a licensed water supplier, this amount will reduce and the relevant deficit will then not reflect the revenue received by the undertaker in respect of that main.

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To correct this, the amendment modifies the calculation of the water charges payable so that it includes the amount received by the undertaker from the licensed water supplier for giving wholesale supplies and permitting the introduction of water into its supply system which can be attributed to the licensed water supplier's customers supplied by that main.

453. *Sections 52 and 55* of the WIA are amended to remove the duty for undertakers to supply water to customers *eligible* for competition outside their areas of appointment whilst ensuring that they do have a duty to supply *ineligible* customers, out of area, whether for domestic or non-domestic purposes. This has been done so that undertakers are not competing for customers with their associated companies outside their area boundaries. The changes will also remove some ambiguity as to duties with respect to domestic and non-domestic supplies when an undertaker supplies water out of area. The only distinction will now be between eligible and ineligible customers.

454. Insertion of new subsection (6A) to *section 52* of the WIA removes undertakers' domestic supply duty to any premises where a customer has served notice that they wish to discontinue being supplied by the undertaker (a request made under new section 63AA; see below) on transfer to a licensed water supplier.

455. *New sections 63AA and 63AB* of the WIA allow undertakers' (domestic and non-domestic supply) customers to notify them that they no longer want to be supplied by the undertaker and instead are to be supplied by a licensed supplier. The notice will specify the time at which the transfer will occur and must allow at least 2 working days notice for metered premises (so that the undertaker can arrange for the meter to be read). Once the undertaker no longer supplies customers, its domestic or non-domestic (as relevant) supply duty to them is interrupted until they re-apply to the undertaker for a supply. Domestic customers wishing to return to the undertaker will re-apply under section 52 of the Act. Non-domestic customers wishing to return will re-apply for a supply under section 55 of the Act. In the latter case, unlike an application under section 52, the undertaker will have ensure that it can meet other current and future supply obligations before it is required to re-supply.

456. *Section 63AC*. The insertion of section 63AC caters for instances where the customer ceases to be supplied by the licensed water supplier but has not notified the undertaker that he has made other arrangements or otherwise does not want a supply. Where the licensee has ceased to supply, an interim supply needs to be available until proper arrangements for re-supply (by the undertaker or another supplier) can be made by the customer.

457. Subsections (2) to (4) provide for the undertaker, as long as it does not put at risk its duties under the Act, to continue supplying the customer with the water as the supplier was previously doing. This supply will continue for a period of at least three months whilst the customer is making other arrangements.

458. Subsections (5) and (6). Where the customer seeks re-supply for non-domestic purposes (under section 55 of the Act) the undertaker will consider this a request for 'new' supply and will first have to ensure certain other obligations can be fulfilled before agreeing to supply. Under subsection 8, the normal provisions

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regarding disconnections for non-payment or at the request of the customer (under sections 60 to 63 of the Water Industry Act) will apply.

459. Subsection (7). If the undertaker unreasonably fails to make a supply under new section 63AC, the customer will be able to sue it for any loss or damage.

460. *Section 68* of the WIA is amended to include licensed water suppliers in the water quality provisions of the Act. Several amendments in subsection (1) ensure that the undertaker's duty to provide wholesome water under this section exists whether the water is supplied by the undertaker or by a licensed water supplier. This duty applies to water supplied for domestic or food production purposes through the water undertaker's supply system.

461. New subsection (1A) requires that the licensed water supplier will be responsible for ensuring the water it supplies is wholesome at the time of supply. This will be irrespective of the source from which the water originates; the potential sources being its own abstraction and treatment works, where relevant, or treated water from an undertaker supplied under a wholesale agreement. For example, a licensed water supplier with a retail authorisation may be in receipt of information (from their customers) that, if it was passed on to the relevant undertaker, could alert the undertaker to a water quality problem.

462. Subsection (2) is amended so that, as for the undertaker, the licensed supplier will not be responsible for instances where the water has ceased to be wholesome after having left the undertaker's pipes. However the undertaker (subsection (3)) does have a responsibility to ensure certain steps are taken to reduce the risk of water deteriorating after leaving the undertaker's pipes. Subsection (3A) extends this duty to licensees.

463. *Section 69* of the WIA is amended to ensure licensed water suppliers are included in the provisions for preserving water quality through the supply system. These provisions describe the general steps an undertaker should ensure are taken, such as monitoring, analysis, recording etc, to ensure that the water it supplies meets the wholesomeness requirements set out in section 68. In the case of the undertaker, the 'steps' described in subsection (2) will need to cover all of the supplies made using the undertaker's system. In the case of licensed water suppliers the steps taken to ensure water quality in subsection (2) will apply only to supplies made by them using the undertaker's system.

464. The section is amended to allow inclusion of licensed suppliers in various regulations including those regarding the use of approved substances and processes in treating water intended for domestic supply or food production purposes, and those regarding publication of information to customers and other interested parties about water quality in the supply system.

465. *Section 70* of the WIA is amended to ensure that anyone concerned in the supply of water unfit for human consumption will be liable to prosecution. This will allow licensed water suppliers and their contractors (or those of undertakers) to be prosecuted for any incidents of such supply. The effect of new subsection (1A) is to include undertakers and any other employer or self-employed persons concerned in the supply as relevant persons to which the section applies. Any of these parties

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would have to show, in the case of an incident, that they had no reasonable grounds for suspecting that the water would be used for human consumption or that they took all reasonable steps and all due diligence to avoid the incident. The undertaker in granting access to a licensed water supplier must ensure that it puts in place arrangements to ensure water is fit.

466. *Section 72* of the WIA: Minor and consequential amendment extends the application of the section to the pipes and conduits of licensed water suppliers. It will be an offence to contaminate water in the pipes of licensed water suppliers as well as those of an undertaker.

467. *Section 73* of the WIA: Minor and consequential amendment extends to the supply of water by licensed suppliers the protection against contamination and waste of water currently afforded to undertakers.

468. *Section 74* of the WIA: Minor and consequential amendment extends to licensed suppliers the protection by regulations preventing contamination and waste of water and safety of water fittings currently afforded to undertakers.

469. *Section 75* of the WIA: Minor and consequential amendment to make provision for premises supplied by licensed water suppliers to remain within the provisions which enable undertakers to prevent damage to property, contamination or misuse of water in their systems.

470. *Section 76* of the WIA is amended to include premises supplied by licensed water suppliers within those that will be affected by temporary hosepipe bans. Since undertakers issue public notices about hosepipe bans, they will remain responsible for informing all customers on their networks, irrespective of the supplier.

471. *Section 78* of the WIA is amended to ensure that when local authorities inform undertakers of water quality or supply problems at a customer's premises, they do this whether the supplier is the undertaker or a licensed supplier.

472. Amendment of *sections 93A to 93D* of the WIA extends to licensed water suppliers the existing duty for undertakers to promote efficient use of water by their customers. Efficiency services offered to customers can, for example, advise them of ways of reducing their water consumption and adapting their seasonal water requirements.

473. *Section 148* of the WIA is amended to clarify that access arrangements with licensed water suppliers are not affected by the restriction on undertakers' charging for metering works. *Section 150* of the WIA is amended to ensure that the effect of the section, to impose a cap on charges on water resellers, does not affect licensed water suppliers supplying their customers.

474. *Section 152* of the WIA is amended to allow licensed water suppliers to obtain grants in order to comply with national security directions (section 208) where this is appropriate.

475. *Section 158* of the WIA, *powers to lay pipes in streets*, is amended to include certain pipes laid in order to introduce water at the request of a licensed water supplier (subject to exclusions). The powers to lay these pipes will also apply across third

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party land under section 159. This power will not apply to pipes laid for the purpose of connecting to a non-potable network.

476. *Section 174* of the WIA: Minor and consequential amendments extend the offence of interference with works, from the pipes and fittings etc vested in or belonging to undertakers, to those vested in or belonging to licensed water suppliers or used by them to supply customers.

477. *Section 175* of the WIA: Minor and consequential amendments extend the offence of tampering with a meter used by undertakers in supplying a customer to meters used in supplying customers of licensed water suppliers.

478. Amendment of *section 179* of the WIA requires undertakers to own any pipes laid by themselves between the licensed water supplier's treatment works and the undertaker's supply system, or between the secondary undertakers' distribution network and the undertaker's supply system in accordance with sections 66B and 66C respectively.

479. Amendment of *section 195* of the WIA requires the Authority to add information on licensed water suppliers to the register that it keeps on undertakers' appointments. The register will include information on licences, variations and revocations. It will also include any direction, consent or determination made by the Secretary of State, Environment Agency or the Assembly.

480. Amendment of *section 201* of the WIA extends the right of the Secretary of State or the Authority to publish information in the public interest on the activities of a licensed supplier.

481. Amendment of *section 202* of the WIA extends to licensed water suppliers the duty to supply to the Secretary of State information related to their licensed activities that the Secretary of State might reasonably require.

482. Amendment of *section 203* of the WIA extends the power of the Secretary of State or the Authority in order that they may acquire information from any person if they suspect a licensed water supplier has breached its licence conditions or caused an undertaker to breach its appointment conditions; and also conversely, if they suspect that an undertaker has caused a licensed water supplier to breach the conditions of its licence. This is to ensure that the Secretary of State or Authority is able to gather all relevant information that they might reasonably need relating to the supply of water by a licensed water supplier.

483. *Section 205* is amended to allow any party; water undertaker, licensed water supplier or sewerage undertaker, subject to paying a suitable fee, to demand meter readings from the other party if it has that information.

484. This amendment ensures relevant data is available to all parties involved in providing water and sewerage services. The aim is to prevent all three parties being obliged to visit the customer's premises (with the possible disruption to the customer) to take meter readings.

485. Amendment of *section 206* of the WIA makes consequential amendments in respect restrictions on disclosure of information. Amongst other things, this extends

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powers to disclose information for the purpose of facilitating the performance of the duties of licensed water suppliers.

486. Amendment of *section 208* of the WIA includes licensed water suppliers within the power to make directions with regard to issues of national security and emergency planning. This draws in licensed water suppliers so that their water sources can if necessary be taken into account in preparations made to deal with civil emergencies.

487. *Schedule 2* of the WIA is amended in order to apply the provisions relating to the making of transfer schemes to circumstances where a special administration order is made in respect of a licensed water supplier which provides one or more designated strategic supplies. They entitle a special administrator to make a scheme to transfer all or part of the property, rights, and liabilities of the licensed water supplier related to the strategic supply or collective strategic supply to one or more other parties, namely a new licensed water supplier together with, if the special administrator so determines, one or more of the undertakers in whose areas the strategic supplies are located. The new paragraph 4A, however, prohibits the special administrator from including in the scheme provisions to transfer the licence itself to the new licensed water supplier, which must go through an appropriate licensing process if it does not already hold a licence.

488. *Schedule 3* of the WIA governs the application of certain provisions of the Insolvency Act 1986 in the specific circumstances of special administration. The amendments provide that the Insolvency Act will be applied where a licensed water supplier is the subject of a special administration order in the same way as it applies where an undertaker is the subject of a special administration order.

489. Amendment of *section 203* of the Water Resources Act 1991 includes the licensed water suppliers in the reciprocal duties (which undertakers are currently under) to exchange information with the Environment Agency with respect to pollution incidents.

490. Amendment of *section 204* of the Water Resources Act 1991; minor and consequential amendments in respect of restrictions on disclosure of information concerning licensed water suppliers.

491. Minor and consequential amendments will be made to paragraph 19A(9) of Schedule 7 to the Competition Act 1998 to make provision for the new arrangements for licensed water suppliers.

492. Minor and consequential amendments will be made to section 168 and section 249 of the Enterprise Act 2002 to make provision for licensed water suppliers.

PUBLIC SECTOR FINANCIAL COST AND PUBLIC SECTOR MANPOWER EFFECTS

493. The Government expects that most of the provisions in the Act will give rise to either no or negligible additional costs, resulting from an increased administrative burden. But certain measures in the Act will involve some additional public expenditure. The Government anticipates that the additional cost to the EA of

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implementing the new abstraction licensing scheme will be about £5 million over the first four years. This will be financed through abstraction charges. Long term ongoing costs of about £1 million, are expected to be vastly offset by savings arising from administrative changes provided for in this Act. The Government anticipates that the establishment of the CCW will initially amount to £1 million and that the long term increase in funding this body and the new Authority will be minimal, these costs will be covered by an increase in water company licence fees.

494. The Government expects that the overall effects of the Act on public sector manpower will be negligible.

SUMMARY OF REGULATORY IMPACT ASSESSMENT

495. *Abstraction and impounding:* Costs to the Environment Agency for implementing the new abstraction licensing system will be about £5 million over the first four years. This will be financed through abstraction charges, which will be shared between around 30,000 licence holders. The total estimated one-off (non-recurring) compliance costs to abstractors of implementing the proposed regulatory regime would range between £2.05 and 41.5 million. The total estimated annual (recurring) costs to new licence-holders as a result of the revised regulatory regime will be approximately £83,200. The revised arrangements are expected to bring benefits to abstractors and increase protection of the environment and our water resources. It is estimated that the new system will remove the need for up to 20,000 of the existing 48,000 licences, the majority of which are held by small businesses, particularly farmers, for abstractions that have no environmental impact. The intended widening of the scope of the abstraction licensing system to different purposes, such as dewatering and navigation abstractions, will bring a significant number of currently exempt abstractors into the regime, thereby increasing the Environment Agency's ability to control our water resources and protect the water environment from damage by abstraction, and also to protect abstractors' rights to water. The proposals also remove the right to compensation where an abstraction licence is revoked or modified to protect the environment from serious damage, in keeping with the 'polluter pays' principle. New measures to require water companies to produce drought and long term water resources plans will provide reassurance to the public that water supplies can be maintained.

496. *New regulatory arrangements:* These provisions are aimed at securing a number of different but complementary objectives with an overall aim of putting the consumer at the heart of the regulatory process and to make regulation more open and accountable. There are not expected to be high compliance costs associated with these provisions, because in many cases they will be funded within current resources and build on or reinforce existing best practice by the Office of Water Services (Ofwat). The net annual increases in costs to Ofwat are estimated to be no more than £0.3 million. The cost of setting up the new Consumer Council for Water (the Consumer Council) is not expected to be great. The existing Customer Service Committees cost around £3.5 million a year to run. The above costs of the Regulatory Authority and those of the Consumer Council will be shared between the regulated water companies through an increase in their licence fees. This is a continuation of the existing system. The benefits expected to arise are different in nature, but all - ultimately are expected

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to serve to safeguard or improve service standards and quality in the water industry and achieve a fairer balance between the interests of consumers and shareholders.

497. *Extending opportunities for competition:* The sections will remove barriers to entry to the water industry and allow access to the public distribution network by licensed water suppliers. This will enable water customers using 50 megalitres or more a year to switch to more competitive suppliers. The size of the market opened up to competition will be to a total value of £243 million. The intended benefits of increased opportunity for competition will provide eligible customers with the opportunity for choice of supplier, a wider choice of tariffs including keener prices and improved services including customer specific supply contracts. The Government expects increased market pressures on undertakers to lead to innovation and efficiency measures that will result in better value for all customers. The provisions create regulatory certainty for both undertakers and new entrants with respect to the Competition Act 1998. By limiting the number of eligible customers by setting a relatively high threshold, the Government has limited the potential costs of the proposed framework. Risks to water quality, the environment, undertakers' revenues and the regulators' ability to oversee the development of the industry are intended to be reduced by the effect of the threshold, limiting potential numbers of customers changing supplier, and the likely volume of new water sources entering the system. The Environment Agency, Drinking Water Inspectorate and Ofwat do expect some increased costs associated with regulating the competition framework. Ofwat will charge a licence application fee to recover its costs. The provisions will allow undertakers to recover costs associated with competition in order to protect, as far as possible, customers ineligible for supply by new entrants from bearing increased water charges as a result. Risks to the network and customers are intended to be limited by requiring potential licensed suppliers to assure the regulators that they are competent to enter the market and comply with their legal obligations and licence conditions.

498. Part 3 includes a number of measures intended to improve the regulatory system that will not significantly add to business costs.

499. A copy of the full Regulatory Impact assessment can be obtained from Defra's website at: www.defra.gov.uk/environment/water/legislation Measures that may be introduced by use of the powers in section 98 are covered in a partial Regulatory Impact Assessment contained in the July 2003 consultation document *Review of Existing Private Sewers and Drains in England and Wales*, which can be obtained from www.defra.gov.uk/corporate/consult/sewers. A full Regulatory Impact Assessment will be produced if these powers are exercised.

500. Copies of the above can also be obtained from David S. Jones, Water Bill Team, Department of Environment, Food and Rural Affairs, Zone 3/G19, 123 Victoria Street, London SW1E 6DE (Tel: 020 7082 8352, e-mail: David.S.Jones@defra.gsi.gov.uk).

COMMENCEMENT

501. The provisions of the Act are to come into force on a day or days appointed by commencement order of the Secretary of State or the Assembly (in relation to the

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powers at Annex A), although the Water Services Regulation Authority and the Consumer Council for Water will not be commenced before 1 April 2005.

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ANNEX A

SECTIONS AND SCHEDULES THAT AFFECT THE POWERS OF THE NATIONAL ASSEMBLY FOR WALES

The following table lists the sections and Schedules of the Act where the powers of the Assembly are expressly mentioned. Other functions of the Secretary of State in the Act are also devolved and to be exercised by the Assembly by section 100 of the Act amending the National Assembly for Wales (Transfer of Functions) Order 1999. The Act adds various new sections to other Acts or amends existing sections in other Acts. Changes made by the following sections of the Act either contain devolved functions or are included in the devolution provisions: sections 1 to 31, 34, 39, 40 to 42, 45 to 47, 50, 56 to 57, 59 to 66, 68 to 72, 74 to 84, 86 to 99 and 102 to 105 and Schedules 1, 2, 4 and 7.

Provision	Title	Effect
Section 10 (Para54)	Orders under section 33 of the WRA, etc	Assembly can repeal section 33 exemption orders for areas wholly within Wales, and to those parts of a cross border exempt area that lie within Wales
Section 35 (Para101)	Consumer Council for Water	Subsections (4) to (6) in new section 27A gives the Assembly a power to direct the allocation of undertakers operating wholly or mainly in Wales to a Welsh regional committees for a six month period. Thereafter the Council may establish or abolish a regional committee covering Wales, or alter an undertaker's allocation, with the consent of the Assembly.

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Section 38 (Para114)	Forward work programme and annual reports	The Authority and the Council must both consult the Assembly on drafts of their forward work programmes. New section 192B requires the Authority to produce, for an annual report on its activities, and those of the Competition Commission in respect of any references made by it, during the previous financial year. The report shall include a general survey of development of matters falling within the scope of its functions, a report on progress of projects described in the forward work programme for that year, a summary of orders and penalties imposed and a report on any matter which it is required to report on as a result of a requirement by the Assembly.
Section 40 (Para127)	Guidance to Authority on social and environmental matters	The section allows the Assembly to issue statutory guidance to the Authority relating to water and sewerage undertakers whose areas are wholly or mainly in Wales. The subject of the guidance is how the Authority might contribute to social and environmental policies in Wales.
Section 44 (Para154)	Provision of information to the Council	New section 27J enables the Assembly to direct the Council to provide reasonable information which it requires for the exercise of its functions. The Assembly will be entitled to reasons from the Council for a refusal to provide the information requested. The Assembly may publish the reasons, subject to the need to exclude information the publication of which might cause serious and prejudicial effects to persons to whom it relates.
Section 48 (Para166)	Financial penalties	This section confers powers on the Assembly to impose financial penalties on statutory undertakers operating wholly or mainly in Wales and on licensees operating in those areas.

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Section 51 (Para184)	Reasons for decisions	This section requires the Assembly to give reasons for key decisions that it takes. The reasons are specified in the new section 195A(1) inserted into the WIA by Section 51. Where the obligation bites, the Assembly must produce, publish and disseminate a notice giving the reasons for its decision.
Section 58 (Para333)	Fluoridation of water supplies	This section gives the Assembly regulation making powers to: <ul style="list-style-type: none"> • alter general concentration • detail consultation procedures; and • specify content of indemnities. It may also determine (or appoint a third party to determine) issues where there is a failure to agree the terms of arrangements with a water undertaker.
Section 77 (Para377)	Flood plans: large raised reservoirs	This section allows the functions of the Secretary of State to direct undertakers to prepare a flood plan to be transferred to the Assembly in relation to Wales.
Section 100 (Para430)	Devolution: Wales	This section amends Schedules 1 and 2 to the National Assembly for Wales (Transfer of Functions) Order 1999.
Section 103 (Para435)	Powers to make further supplementary, consequential and transitional provision, etc	This section gives the Assembly power to make regulations in relation to its functions under the Act.
Section 104 (Para438)	Interpretation, commencement, short title, and extent	This section details the authority with the power to commence the different provisions of the Act, i.e. the Secretary of State of the Assembly.
Schedule 2 (Para101)	The Consumer Council for Water	See section 35 above.

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Schedule 4 (Para193)	Licensing of water suppliers	Competition provisions do restrict existing Assembly powers, but will add powers relating to customer eligibility, exemptions for new customers, and the amendment of the eligibility threshold. Provision is also made for the Secretary of State to consult the Assembly when carrying out other functions in the schedule.
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ANNEX B

PARLIAMENTARY HISTORY

Parliamentary Stage	Date	Hansard Reference
House of Lords Introduction/ First Reading	3 rd February 2003	Vol. 644 (no.48) col 1140
Second Reading	6 th March 2003	Vol. 645 (no.58) col 968
Committee	27 th March and 1 st , 3 rd , 8 th , 10 th , 29 th April 2003	Vol. 646 (no.s72, 74, 76) cols GC37, GC93, GC149 Vol. 647 (no.s79, 81, 83) cols GC1, GC67, GC115
Report Stage	12 th , 24 th June 2003	Vol. 649 (no.107) cols 343, 399 Vol. 650 (no.115) cols 153, 229
Third Reading	9 th July 2003	Vol. 651 (no.126) cols 295, 385
House of Commons First Reading	11 th July 2003	
Second Reading	8 th September 2003	Vol. 410 (no.132) col 56
Committee Stage	16 th , 18 th September and 14 th , 16 th , 21 st , 23 rd October 2003	SC-D
Remaining Stages	10 th November 2003	Vol. 412 (no.153) col 855
Lords' Consideration of Commons Amendments	13 th November 2003	Vol. 654 (no.169) col 1668
Royal Assent	20 th November 2003	House of Lords Hansard Vol 654Col 2114 House of Commons Hansard Vol 413 Col 1037

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