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## SCHEDULES

VALID FROM 01/04/2006

### SCHEDULE 1

Section 34(2)

THE WATER SERVICES REGULATION AUTHORITY  
.....

VALID FROM 01/10/2005

### SCHEDULE 2

Section 35(2)

THE CONSUMER COUNCIL FOR WATER

PROSPECTIVE

After Schedule 3 to the WIA there is inserted—

### “SCHEDULE 3A

Section 27A(11)

THE CONSUMER COUNCIL FOR WATER

#### *Membership of Council*

- 1 (1) The Council shall consist of—
  - (a) a chairman appointed by the Secretary of State;
  - (b) one other member appointed by the Assembly; and
  - (c) such other members as may be appointed by the Secretary of State.
- (2) The Secretary of State shall consult the Assembly before appointing the chairman.
- (3) The Secretary of State and the Assembly shall consult the chairman before appointing any other member.
- (4) An appointment under this paragraph shall be for a term not exceeding five years.
- (5) In appointing persons under this paragraph the Secretary of State and the Assembly shall have regard to the desirability of including among the members one or more persons who—
  - (a) have experience of work among, and the special needs of, disabled persons; or
  - (b) have or have had a disability.

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### *Membership of Council*

- 2 (1) A person holding office as chairman or other member may resign that office by giving notice to the Secretary of State (in the case of a member appointed by him), or to the Assembly (in the case of a member appointed by the Assembly).
- (2) The Secretary of State may remove any person appointed by him from office as chairman or other member on the ground of incapacity or misbehaviour.
- (3) The Secretary of State shall consult the Assembly before removing any person appointed by him as chairman.
- (4) The Assembly may remove any person appointed by it from office as member on the ground of incapacity or misbehaviour.
- (5) Otherwise, the chairman and other members shall hold and vacate office as such in accordance with the terms of their respective appointments.
- (6) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.

### *Terms of appointment, remuneration, pensions etc*

- 3 The Council shall pay to the chairman and other members of the Council such remuneration, and such travelling and other allowances, as the Secretary of State may determine.

### *Terms of appointment, remuneration, pensions etc*

- 4 (1) If the Secretary of State so determines in the case of any holder of the office of chairman or other member, the Council shall pay—
- (a) such pension, allowance or gratuity to or in respect of him, or
  - (b) such contributions or payments towards provision for such a pension, allowance or gratuity,
- as the Secretary of State may determine.
- (2) If, when any person ceases to hold office as chairman or other member, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.

### *Members appointed by Assembly*

- 5 In relation to any member of the Council appointed by the Assembly, the matters mentioned in paragraphs 3 and 4 above shall be determined by the Assembly instead of by the Secretary of State.

### *Staff*

- 6 (1) The Council shall, with the approval of the Secretary of State, appoint a principal officer on such terms of employment as it may, with that approval, determine.
- (2) The Council may, with the approval of the Secretary of State as to numbers and terms of employment, appoint such other employees as it may determine.

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- (3) The persons to whom section 1 of the Superannuation Act 1972 (persons to or in respect of whom benefits may be provided by schemes under that section) applies shall include employees of the Council.
- (4) The Council shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (3) above in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

#### *Annual reports*

- 7 (1) As soon as practicable after the end of each financial year the Council shall report to the Secretary of State on its activities during the year.
- (2) The annual report for each year shall include a report on the progress of the projects described in the Council's forward work programme for that year.
- (3) In making any report under this paragraph the Council shall not include any information which relates to the affairs of a particular individual or body of persons (corporate or unincorporate) unless one or more of paragraphs (a) to (c) of sub-paragraph (4) below applies to the information.
- (4) Information relating to a particular individual or body may be included in the report if—
  - (a) that individual or body has consented to its inclusion;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (5) Before deciding to include any information relating to a particular individual or body in pursuance of sub-paragraph (4)(c) above, the Council shall—
  - (a) consult that person or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of sub-paragraph (4)(c) above to the information or as to the desirability or otherwise of its publication,and paragraph (b) applies whether the opinion is given in relation to information itself or to information of a description which applies to that information.
- (6) In making any report under this paragraph the Council shall not include any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (7) In considering whether information relates to any matter as mentioned in sub-paragraph (6) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (8) The Secretary of State shall lay a copy of each annual report of the Council before each House of Parliament.

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- (9) The Council shall send a copy of each annual report to the Authority and the Assembly and shall arrange for the report to be published in such further manner as it considers appropriate.

*Financial provisions and accounts*

- 8 (1) It shall be the duty of the Council to comply with any notice given by the Secretary of State requiring it to perform duties of a financial nature specified in the notice.
- (2) The Secretary of State shall consult the Assembly before giving any notice to the Council under sub-paragraph (1) above.

*Financial provisions and accounts*

- 9 (1) The Council shall prepare, in respect of each financial year, a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Council.
- (2) The statement of accounts shall comply with any requirement which the Secretary of State has notified to the Council.
- (3) The Council shall, within such period after the end of the financial year to which it relates as the Secretary of State may specify by notice given to the Council, send copies of each statement of accounts of the Council to—
- (a) the Secretary of State and the Assembly; and
  - (b) the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General shall—
- (a) examine, certify and report on every statement sent to him under sub-paragraph (3) above; and
  - (b) lay a copy of the statement and of his report before each House of Parliament.

*Financial provisions and accounts*

- 10 The Secretary of State and the Assembly shall pay to the Council such sums as he or it thinks fit to enable it to meet its expenses.

*Regional committees*

- 11 (1) The Council shall not establish or abolish a regional committee, or alter the allocation of a relevant undertaker to a regional committee, without the approval of the appropriate authority.
- (2) If the Council proposes to do anything mentioned in sub-paragraph (1) above it shall, after consulting the appropriate authority, give notice—
- (a) describing its proposals; and
  - (b) specifying the time from the date of the notice (not being less than two months) within which representations may be made with respect to the proposals;
- and shall consider any representations that are duly made and not withdrawn.

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- (3) A notice under sub-paragraph (2) above shall be given by publishing it in such manner as the Council considers appropriate for bringing the proposals to the attention of those likely to be affected.
- (4) An appropriate authority shall not give its approval under sub-paragraph (1) above until after the time specified in the notice under sub-paragraph (2) above.

*Regional committees*

- 12 (1) A regional committee of the Council shall consist of—
  - (a) a chairman appointed by the appropriate authority;
  - (b) such other members as the Council may appoint.
- (2) Any regional committee may establish sub-committees.
- (3) The members of a regional committee of the Council may include persons who are not members of the Council (and the members of a sub-committee of the committee may include persons who are not members of the committee or the Council).
- (4) In appointing members of a regional committee the Council shall take account of any guidance given to them by the appropriate authority.
- (5) The Council may pay to the chairman and other members of a regional committee, or a sub-committee, such remuneration, and such travelling and other allowances, as the appropriate authority may determine.

*Regional committees*

- 13 (1) If the appropriate authority so determines in the case of any holder of the office of chairman or other member of a regional committee, or of any sub-committee of a regional committee, the Council shall pay—
  - (a) such pension, allowance or gratuity to or in respect of him; or
  - (b) such contributions or payments towards provision for such a pension, allowance or gratuity,as the appropriate authority may determine.
- (2) If, when any person ceases to hold office as chairman or other member of a regional committee, the appropriate authority determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the appropriate authority.

*Regional committees*

- 14 In paragraphs 11 to 13 above the “appropriate authority” means—
  - (a) the Assembly, in relation to committees established (or proposed to be established) for relevant undertakers whose areas are wholly or mainly in Wales, to sub-committees of those committees, and to any relevant undertaker whose area is wholly or mainly in Wales;
  - (b) the Secretary of State, in relation to committees established (or proposed to be established) for other relevant undertakers, to sub-committees of those committees, and to any other relevant undertaker.

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*Other committees*

- 15 (1) The Council may establish committees other than regional committees and any such committee may establish sub-committees.
- (2) The members of any such committee may include persons who are not members of the Council (and the members of a sub-committee may include persons who are not members of the relevant committee or the Council).
- (3) The Council may pay to the chairman and other members of any such committee, or of a sub-committee, such remuneration, and such travelling and other allowances, as the Secretary of State may determine.

*Other committees*

- 16 (1) If the Secretary of State so determines in the case of any holder of the office of chairman or other member of any such committee, or of any sub-committee of such a committee, the Council shall pay—
- (a) such pension, allowance or gratuity to or in respect of him; or
- (b) such contributions or payments towards provision for such a pension, allowance or gratuity,
- as the Secretary of State may determine.
- (2) If, when any person ceases to hold office as chairman or other member of any such committee, or of any sub-committee of such a committee, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.

*Performance of functions of the Council*

- 17 Anything authorised or required to be done by the Council may be done by any member or employee of the Council who, or any regional or other committee of the Council which, is authorised for the purpose by the Council (whether generally or specially).

*Performance of functions of the Council*

- 18 The validity of anything done by the Council is not affected by a vacancy among its members or by a defect in the appointment of a member.

*Supplementary powers*

- 19 (1) The Council shall have power to do anything which is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions.
- (2) That power includes, among other things, power to enter into agreements and to acquire and dispose of property.
- (3) The Council may make charges for facilities or services provided by it at the request of any person.

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*First financial year of the Council*

- 20 (1) If the period beginning with the day on which the Council is established and ending with the next 31st March is six months or more, the first financial year of the Council is that period.
- (2) If the period mentioned in sub-paragraph (1) above is less than six months, the first financial year of the Council is the period beginning with the day on which the body is established and ending with 31st March in the following year.

*Compensation for members of customer service committees*

- 21 The Authority may pay to any person who immediately before the abolition by the Water Act 2003 of a customer service committee established under section 28(1) of this Act is the chairman of that body such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Secretary of State may determine.”

SCHEDULE 3

Section 36(6)

FURTHER PROVISIONS ABOUT TRANSFERS OF FUNCTIONS, PROPERTY ETC

*Preliminary*

- 1 In this Schedule—
- “transfer” means—
- (a) a transfer of functions under section 36 to the Authority, or
- (b) a transfer of property, rights and liabilities to the Authority or to the Council under section 36, and
- “transfer scheme” means a transfer scheme under section 36.

**Commencement Information**

- II** Sch. 3 para. 1 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)

*Contents of transfer schemes*

- 2 (1) The property, rights and liabilities which may be transferred by a transfer scheme include property, rights and liabilities that would not otherwise be capable of being transferred or assigned.
- (2) The transfers authorised by sub-paragraph (1) include transfers which are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled to the property or right, or subject to the liability, in question.



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**Commencement Information**

**I2** Sch. 3 para. 2 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)

- 3 A transfer scheme may define the property, rights and liabilities to be transferred by specifying them or describing them or by referring to all (or all except anything specified or described) of the property, rights and liabilities comprised in a specified part of the undertaking of the transferor (or partly in one way and partly in the other).

**Commencement Information**

**I3** Sch. 3 para. 3 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)

- 4 A transfer scheme may include such supplementary, incidental, transitional and consequential provision as the Secretary of State considers appropriate.

**Commencement Information**

**I4** Sch. 3 para. 4 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)

*Modification of transfer scheme after appointed day*

- 5 (1) If, after the day appointed by a transfer scheme, the transferor and transferee so agree in writing, the scheme shall for all purposes be deemed to have come into force on that day with such modifications as may be agreed.
- (2) An agreement under this paragraph may, in connection with giving effect to modifications to the scheme, include incidental, supplemental, consequential and transitional provision.
- (3) In this paragraph, “modifications” includes additions, alterations and omissions.

**Commencement Information**

**I5** Sch. 3 para. 5 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)

*Effect of transfers*

- 6 (1) Anything done by the transferor for the purpose of or in connection with anything transferred which is in effect immediately before it is transferred shall be treated as if done by the transferee.
- (2) A transfer does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.

**Commencement Information**

**I6** Sch. 3 para. 6 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)



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- 7 There may be continued by or in relation to the transferee anything (including legal proceedings) relating to anything transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred.

**Commencement Information**

**I7** Sch. 3 para. 7 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)

- 8 The transferee shall be substituted for the transferor in any document relating to anything transferred.

**Commencement Information**

**I8** Sch. 3 para. 8 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)

*Continuity of employment, etc of transferred employees*

- 9 Where a person employed in the civil service of the state becomes an employee of the Council under a transfer scheme, his period of employment in that service counts as a period of employment with the Council for the purposes of the Employment Rights Act 1996 (c. 18) (and the change of employer does not break the continuity of the period of employment for those purposes).

**Commencement Information**

**I9** Sch. 3 para. 9 in force at 1.4.2005 by S.I. 2005/968, art. 2(e)

SCHEDULE 4

Section 56

LICENSING OF WATER SUPPLIERS

- 1 The WIA is amended as follows.

**Commencement Information**

**I10** Sch. 4 para. 1 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(1)(ii), Sch. 1 (with Sch. 3 para. 7)

**I11** Sch. 4 para. 1 in force at 1.8.2005 for specified purposes by S.I. 2005/968, art. 3(b)(ii)

- 2 After Chapter 1 of Part 2 of the WIA there is inserted—

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## “CHAPTER 1A

### LICENSING OF WATER SUPPLIERS

#### *Granting of licences*

#### **Licensing of water suppliers**

17A(1) Subject to the following provisions of this Chapter—

- (a) the Secretary of State; or
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State (after consulting the Assembly), the Authority,

may grant to a company a licence (a “water supply licence”) giving it the retail authorisation referred to in subsection (2) below, or both that and the supplementary authorisation referred to in subsection (5) below.

- (2) The retail authorisation is an authorisation to the company to use a water undertaker’s supply system for the purpose of supplying water to the premises of customers of the company (subject to subsection (3) below) in accordance with Chapter 2A of Part 3 of this Act.
- (3) The following requirements must be satisfied in relation to each of the premises supplied by the company—
  - (a) the requirement that the premises are not household premises (as defined in section 17C below);
  - (b) the threshold requirement (construed in accordance with section 17D below); and
  - (c) the requirement that the premises are not being supplied with water by another company pursuant to a water supply licence,
 and those requirements shall be enforceable under section 18 below by the Authority.
- (4) A water supply licence which gives a company only the retail authorisation is referred to in this Chapter as a “retail licence”.
- (5) The supplementary authorisation is an authorisation to the company to introduce water into a water undertaker’s supply system, by means of which any particular supply of water in accordance with the retail authorisation is to take place, in connection with that supply and in accordance with Chapter 2A of Part 3 of this Act.
- (6) A water supply licence which gives a company also the supplementary authorisation is referred to in this Chapter as a “combined licence”.
- (7) Before granting a combined licence—
  - (a) the Secretary of State shall consult the Assembly; and
  - (b) the Authority shall consult the Secretary of State and the Assembly.
- (8) A water supply licence shall not be granted to a company unless—
  - (a) it is a limited company; and

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- (b) it is not a relevant undertaker.
- (9) The Authority may, with the approval of the Secretary of State, issue guidance as to the factors which are, or are not, to be taken into account in determining the extent of any premises for the purposes of subsection (3) above.
- (10) Before giving his approval to any guidance issued under subsection (9) above, the Secretary of State shall consult the Assembly.

### **Section 17A: supplementary**

- 17B (1) The Authority shall publish guidance issued under section 17A(9) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (2) The Authority may, with the approval of the Secretary of State, revise the guidance so issued.
- (3) Before giving his approval to guidance revised under subsection (2) above, the Secretary of State shall consult the Assembly.
- (4) Subsection (1) above applies to guidance revised under subsection (2) above as it applies to guidance issued under section 17A(9) above.
- (5) In this Chapter, references to the supply system of a water undertaker are to the system comprising the following—
  - (a) any water mains and other pipes which it is the water undertaker's duty to develop and maintain by virtue of section 37 below and which are used for the purpose of conveying water from the undertaker's treatment works to the premises of customers; and
  - (b) any water mains and other pipes which—
    - (i) are used by the undertaker for the purpose of conveying non-domestic water from any of its sources to the premises of customers; and
    - (ii) are not connected to any water mains or pipes falling within paragraph (a) above or to any water mains or other pipes connected to the treatment works mentioned in that paragraph (whether directly or indirectly),and in sub-paragraph (i) above the reference to non-domestic water is to water supplied other than for domestic or food production purposes.
- (6) In subsection (5)(a) above, the reference to treatment works is a reference to the works designated from time to time by the Secretary of State as treatment works for the purposes of this subsection.
- (7) Before designating any works for the purposes of subsection (6) above, the Secretary of State shall consult the Assembly.
- (8) A list of any works designated for the purposes of subsection (6) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.

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- (9) References in this Act to a licensed water supplier are references to a company which is the holder for the time being of a water supply licence.

### **Meaning of household premises**

- 17C (1) For the purposes of section 17A(3)(a) above, “household premises” means premises in which, or in any part of which, a person has his home.
- (2) The fact that a person has his home in, or in part of, any premises does not mean that the premises are household premises unless the principal use of the premises is as a home.
- (3) The Secretary of State may by regulations make provision as to—
- (a) the circumstances in which a person is or is not to be treated as having his home in, or in part of, any premises for the purposes of this section; and
  - (b) the factors which are, or are not, to be taken into account in determining the principal use of any premises for those purposes.
- (4) The power to make regulations under subsection (3) above is exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

### **The threshold requirement**

- 17D(1) This section applies for the purpose of construing the reference to the threshold requirement in section 17A(3)(b) above in relation to the supply of water to any premises.
- (2) The requirement is that, at the time when the licensed water supplier first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually pursuant to the undertaking is not less than 50 megalitres.
- (3) Any estimate of the quantity of water to be supplied to any premises for the purposes of subsection (2) above shall be made in accordance with guidance issued by the Authority with the approval of the Secretary of State.
- (4) Any guidance issued under subsection (3) above may, in particular—
- (a) specify—
    - (i) the factors to be, and not to be, taken into account;
    - (ii) the assumptions to be made; and
    - (iii) the method of calculation to be employed, in making estimates; and
  - (b) make provision as to the commencement of the annual periods by reference to which estimates are to be made.
- (5) Before giving his approval to any guidance issued under that subsection, the Secretary of State shall consult the Assembly.

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- (6) Subsections (1) to (4) of section 17B above apply to guidance issued under subsection (3) above as they apply to guidance issued under section 17A(9) above.
- (7) The Secretary of State may make provision by regulations as to the circumstances in which a licensed water supplier is not, for the purposes of subsection (2) above, to be treated as entering into an undertaking with a new customer to give a supply of water to any premises (subject to subsection (12) below).
- (8) The Secretary of State may by regulations amend subsection (2) above by substituting, for the quantity of water for the time being specified there, a different quantity of water (subject to subsection (12) below).
- (9) Regulations under subsection (8) above—
  - (a) shall include provision for the amendment made by the regulations not to apply in relation to any undertaking entered into before the date on which the regulations come into force; and
  - (b) may include provision for that amendment not to apply in relation to any undertaking which is proposed, but not entered into, before that date.
- (10) A statutory instrument containing regulations under subsection (8) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (11) Before making regulations under subsection (8) above, the Secretary of State shall consult—
  - (a) the Authority; and
  - (b) such other persons (if any) as the Secretary of State thinks it appropriate to consult.
- (12) The powers to make regulations under subsections (7) and (8) above are exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.
- (13) Subsections (9) and (11) above apply in relation to regulations made by the Assembly under subsection (8) above by virtue of subsection (12) above as they apply in relation to regulations made by the Secretary of State under subsection (8) above.

#### **Determinations by the Authority**

- 17E (1) The Authority may determine, in a case referred to it by a licensed water supplier or a potential customer of a licensed water supplier, whether a proposed supply of water by the supplier to the customer would be in accordance with the retail authorisation given to the supplier in the licence.
- (2) The matters which the Authority may determine include the following matters—
  - (a) the extent of the premises to be supplied for the purposes of section 17A(3) above;

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- (b) whether the premises to be supplied are household premises (as defined in section 17C above); and
- (c) whether the threshold requirement is satisfied in relation to the premises to be supplied (construed in accordance with section 17D above),

and also include any other matter the determination of which is relevant to those matters.

### **Procedure for granting water supply licences**

17F (1) An application for—

- (a) a water supply licence;
- (b) the variation of a retail licence so that it gives also the supplementary authorisation; or
- (c) the variation of a combined licence so that it gives only the retail authorisation,

shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.

- (2) Within the prescribed period after the making of such an application, the applicant shall publish in the prescribed manner a notice of the application containing such particulars as may be prescribed.
- (3) The particulars which may be prescribed by virtue of subsection (2) above include the time within which, and the address at which, representations or objections with respect to the application may be made.
- (4) If the Secretary of State or the Authority proposes to refuse the application, he or it shall give to the applicant a notice—
  - (a) stating that he or it proposes to refuse the application;
  - (b) stating the reasons why he or it proposes to refuse the application; and
  - (c) specifying the time within which representations or objections with respect to the proposed refusal may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (5) The Secretary of State may make provision by regulations disapplying subsections (2) and (3) above in relation to an application under subsection (1) above in such circumstances as may be prescribed.
- (6) A licence shall be in writing and, unless revoked or suspended in accordance with any condition contained in it, shall continue in force for such period as may be specified in or determined by or under the licence.
- (7) As soon as practicable after granting a licence or variation of a licence, the Secretary of State or the Authority shall serve a copy of the licence or licence as varied—
  - (a) on the licence holder;
  - (b) on the Assembly;
  - (c) on the Chief Inspector of Drinking Water;

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- (d) on the Environment Agency;
  - (e) on the Council;
  - (f) on each relevant undertaker;
  - (g) on each licensed water supplier (other than the holder of the licence in question);
  - (h) if the licence or variation is granted by the Secretary of State, on the Authority;
  - (i) if the licence or variation is granted by the Authority, on the Secretary of State.
- (8) Any sums received by the Secretary of State or by the Authority by virtue of this section shall be paid into the Consolidated Fund.

### **Water supply licence conditions**

17G(1) A water supply licence may include—

- (a) such conditions as appear to the Secretary of State or, as the case may be, the Authority to be requisite or expedient having regard to the duties imposed on him or it by Part 1 of this Act;
  - (b) conditions requiring the rendering to the Secretary of State of a payment on the grant of a water supply licence, or payments while such a licence is in force, or both, of such amount or amounts as may be determined by or under the conditions.
- (2) Conditions may be included by virtue of subsection (1)(a) above in a water supply licence whether or not they are connected with the supply of water or the introduction of water into a water undertaker's supply system.
- (3) Conditions included in a water supply licence may—
- (a) require the holder of the licence to comply with any direction given by a specified relevant person as to specified matters or matters which are of a specified description;
  - (b) require the holder of the licence to do or not to do specified things or things which are of a specified description, except in so far as a specified relevant person consents to the holder's not doing or doing them; and
  - (c) provide for the reference to and determination by a specified relevant person of specified questions, or questions which are of a specified description, which arise under or in connection with the licence.
- (4) For the purposes of subsection (3) above—
- (a) the following are relevant persons—
    - (i) the Secretary of State;
    - (ii) the Authority;
    - (iii) the Assembly;
    - (iv) the Environment Agency; and
  - (b) "specified" means specified in the licence in question.
- (5) Conditions included in a water supply licence may contain provision for the conditions to have effect, cease to have effect or be modified at such times, in



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such manner and in such circumstances as may be specified in or determined in accordance with the conditions.

- (6) Any such condition as is referred to in subsection (5) above shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of a licence.
- (7) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

### **Standard conditions of water supply licences**

17H(1) Such conditions as may be—

- (a) determined by the Secretary of State (after consulting the Assembly); and
  - (b) published by him in such manner as he considers appropriate,
- shall be standard conditions of water supply licences granted by the Secretary of State or the Authority.
- (2) The standard conditions which may be determined may be different for—
    - (a) retail licences; and
    - (b) combined licences,
 and standard conditions relating to the retail authorisation may be different depending on whether they are to relate to retail licences or combined licences.
  - (3) The power to determine standard conditions in relation to retail licences and combined licences may be exercised only before the grant of (respectively) the first retail licence and the first combined licence (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).
  - (4) The standard conditions for the purposes of water supply licences of either description may contain provision—
    - (a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
    - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and
    - (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
  - (5) Subject to subsection (6) below, each condition which is a standard condition shall be incorporated by reference in each water supply licence (or in each such licence to which the standard condition applies).
  - (6) Subject to the following provisions of this section, the Secretary of State or the Authority may, in granting a licence, exclude or modify any of the

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standard conditions to such extent as he or it considers requisite to meet the circumstances of a particular case.

- (7) Before excluding any standard conditions or making any modifications under subsection (6) above, the Secretary of State or the Authority shall give notice—
- (a) stating that he or it proposes to exclude the conditions or make the modifications and setting out the effect of so doing;
  - (b) stating the reasons why he or it proposes to exclude the conditions or make the modifications; and
  - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (8) A notice under subsection (7) above shall be given—
- (a) by publishing the notice in such manner as the Secretary of State or (as the case may be) the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and
  - (b) by serving a copy of the notice—
    - (i) on the Assembly;
    - (ii) on the Chief Inspector of Drinking Water;
    - (iii) if the notice is published by the Secretary of State, on the Authority;
    - (iv) if the notice is published by the Authority, on the Secretary of State.
- (9) If, within the time specified in the notice under subsection (7) above, the Secretary of State (after consulting the Assembly) directs the Authority not to exclude or modify any standard condition, the Authority shall comply with the direction.
- (10) The Secretary of State or the Authority shall not exclude any conditions, or make any modifications, under subsection (6) above unless he or it is of the opinion that the exclusions or modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and
  - (b) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).
- (11) The modification under subsection (6) above of part of a standard condition shall not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.

### **Modification of water supply licences by agreement**

- 17I (1) Subject to the following provisions of this section, the Authority may modify the conditions of a particular water supply licence.

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- (2) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—
- (a) are requisite to meet the circumstances of the particular case; and
  - (b) are such that—
    - (i) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and
    - (ii) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (3) Before making modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on—
    - (i) the licence holder;
    - (ii) the Council;
    - (iii) the Secretary of State;
    - (iv) the Assembly; and
    - (v) the Chief Inspector of Drinking Water.
- (5) If, within the period specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

### **Modification of standard conditions of water supply licences**

- 17J (1) Subject to the following provisions of this section, the Authority may modify the standard conditions of retail licences or combined licences.
- (2) Where at any time the Authority modifies the standard conditions of retail licences or combined licences under this section the Authority may make

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such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that description.

- (3) Before making any modifications under this section, the Authority shall give notice—
  - (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on—
    - (i) each relevant licence holder;
    - (ii) the Council;
    - (iii) the Secretary of State;
    - (iv) the Assembly; and
    - (v) the Chief Inspector of Drinking Water.
- (5) If, within the time specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The Authority may not under this section make any modifications of the standard conditions of retail licences or combined licences unless—
  - (a) no notice of objection to those modifications is given by any relevant licence holder to the Authority within the time specified in the notice under subsection (3) above;
  - (b) if one or more relevant licence holders give notice of objection to the Authority within that time—
    - (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be specified in an order made by statutory instrument by the Secretary of State; and
    - (ii) the percentage given by subsection (7) below is less than such percentage as may be so specified; or
  - (c) subsection (8) below applies to the case.
- (7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share at such time and in such manner as may be specified in an order under subsection (6) above.
- (8) This subsection applies where the Authority is satisfied that—

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- (a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
  - (b) the modifications would remove or reduce the burden without removing any necessary protection; and
  - (c) the modifications are such that no holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences.
- (9) An order under subsection (6) above may include such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (10) Before making an order under subsection (6) above, the Secretary of State shall consult the Assembly.
- (11) A statutory instrument containing an order under subsection (6) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) Where the Authority modifies the standard conditions of retail licences or combined licences, the Authority shall—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (13) In this section “relevant licence holder”, in relation to proposed modifications of standard conditions of retail licences or combined licences, means the holder of a licence of that description—
- (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
  - (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 17H(4) above) at the time specified in the notice under subsection (3) above.

### **Water supply licences: modification references to Competition Commission**

- 17K(1) The Authority may make to the Competition Commission (in this section and the following provisions of this Chapter referred to as “the Commission”) a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which—
    - (i) relate to the carrying on of activities authorised or regulated by a particular licence; and
    - (ii) are specified in the reference,
 operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the conditions of the licence.

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- (2) The Authority may make to the Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
  - (a) whether any matters which—
    - (i) relate to the carrying on of activities authorised or regulated by retail licences or combined licences; and
    - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the standard conditions of licences of that description.
- (3) The Authority may, at any time, by notice given to the Commission vary a reference under this section by—
  - (a) adding to the matters specified in the reference; or
  - (b) excluding from the reference some of the matters so specified,and on receipt of any such notice the Commission shall give effect to the variation.
- (4) The Authority may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
  - (a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the relevant conditions by which, in its opinion, those effects could be remedied or prevented.
- (5) As soon as practicable after making a reference under this section or a variation of such a reference, the Authority shall—
  - (a) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and
  - (b) serve a copy of the reference or variation on—
    - (i) the licence holder or, as the case may be, the relevant licence holders;
    - (ii) the Council;
    - (iii) the Secretary of State;
    - (iv) the Assembly; and
    - (v) the Chief Inspector of Drinking Water.
- (6) If, before the end of the period of twenty-eight days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Commission—
  - (a) not to proceed with the reference; or
  - (b) not to give effect to the variation,the Commission shall comply with the direction.

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- (7) It shall be the duty of the Authority, for the purpose of assisting the Commission in carrying out an investigation on a reference under this section or in carrying out functions under section 17P below, to give to the Commission—
- (a) any information in the Authority’s possession which relates to matters falling within the scope of the investigation or the carrying out of those functions and which is either—
    - (i) requested by the Commission for that purpose; or
    - (ii) information which, in the Authority’s opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within the Authority’s power to give, in relation to any such matters,
- and the Commission, for the purpose of carrying out any such investigation or such functions, shall take account of any information given to it for that purpose under this subsection.
- (8) In this section and the following provisions of this Chapter—
- “relevant conditions”—
- (a) in relation to a reference under subsection (1) above, means the conditions of the licence to which the reference relates; and
  - (b) in relation to a reference under subsection (2) above, means the standard conditions of the licences to which the reference relates; and
- “relevant licence holder” means the holder of a licence to which a reference under subsection (2) above relates.
- (9) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Authority by Part 1 of this Act.

#### **References under section 17K: time limits**

- 17L (1) Every reference under section 17K above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 17K above shall not have effect (and no action shall be taken in relation to it under section 17O below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
  - (3) The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
  - (4) No more than one extension is possible under subsection (3) above in relation to the same reference.



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- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
- (a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

### **References under section 17K: powers of investigation**

- 17M(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 17K above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

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### **Water supply licences: reports on modification references**

- 17N(1) In making a report on a reference under section 17K above, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of its conclusions;
  - (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) For the purposes of section 17O below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 17K above as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 17K above.
- (5) In making any report on a reference under section 17K above the Commission must have regard to the following considerations before disclosing any information.
- (6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (7) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (8) The third consideration is the extent to which the disclosure of the information mentioned in subsection (7)(a) or (b) above is necessary for the purposes of the report.

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- (9) A report of the Commission on a reference under section 17K above shall be made to the Authority.
- (10) Subject to subsection (13) below, the Authority shall—
- (a) on receiving a report on a reference under section 17K(1) above, serve a copy of it on—
    - (i) the licence holder;
    - (ii) the Council;
    - (iii) the Secretary of State; and
    - (iv) the Assembly; and
  - (b) not earlier than the relevant time, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (11) Subject to subsection (13) below, the Authority shall—
- (a) on receiving a report on a reference under section 17K(2) above, serve a copy of it on—
    - (i) the Secretary of State; and
    - (ii) the Assembly; and
  - (b) not earlier than the relevant time—
    - (i) serve another copy on each relevant licence holder; and
    - (ii) not less than twenty-four hours after complying with subparagraph (i) above, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (12) For the purposes of subsections (10) and (11) above, the “relevant time” means—
- (a) fourteen days after the copy of the report in question is received by the Secretary of State and the Assembly, or
  - (b) if copies are received by them on different days, fourteen days after the later day.
- (13) Subsection (14) below applies if it appears to the Secretary of State that the publication of any matter in a report on a reference under section 17K(1) or (2) above would be against—
- (a) the public interest; or
  - (b) the commercial interests of any person.
- (14) The Secretary of State may, not later than the relevant time for the purposes of subsection (10) or (11) above, direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be served and published as mentioned in paragraph (b) of that subsection; and the Authority shall comply with any such direction.

#### **Water supply licences: modification following report**

- 17O(1) Where a report of the Commission on a reference under section 17K above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;

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- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Authority shall, subject to the following provisions of this section, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- (2) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences in consequence of a reference under section 17K(2) above, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.
- (3) Before making modifications under this section, the Authority shall have regard to the modifications specified in the report.
- (4) Before making modifications under this section, the Authority shall give notice—
  - (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (4) above shall be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications;
  - (b) by serving a copy of the notice on the holder of the licence in question or, as the case may be, the relevant licence holders; and
  - (c) by serving a copy of the notice on—
    - (i) the Council;
    - (ii) the Secretary of State;
    - (iii) the Assembly; and
    - (iv) the Chief Inspector of Drinking Water.
- (6) After considering any representations or objections made in response to proposals set out in a notice under subsection (4) above, the Authority shall give notice to the Commission—
  - (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
  - (b) stating the reasons for making the modifications.

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- (7) The Authority shall include with the notice under subsection (6) above a copy of any representations or objections received in relation to the notice under subsection (4) above.
- (8) If the period of four weeks from the date on which the notice under subsection (6) above is given elapses without a direction under section 17P(1)(a) below having been given to it, the Authority shall—
  - (a) make the modifications set out in the notice; or
  - (b) if a direction under section 17P(1)(b) below has been given, make the modifications which are not specified in the direction.
- (9) The modification under subsection (1) above of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences in consequence of a reference under section 17K(2) above, the Authority shall—
  - (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
  - (b) publish the modifications made for those purposes in such manner as it considers appropriate.

#### **Water supply licences: Commission’s power of veto following report**

- 17P (1) The Commission may, within the period of four weeks after the date on which it is given a notice under section 17O(6) above, direct the Authority—
- (a) not to make the modifications set out in that notice; or
  - (b) not to make such of the modifications as may be specified in the direction;
- and the Authority shall comply with any such direction.
- (2) The Secretary of State may—
    - (a) within the period of four weeks after the date on which the Commission is given a notice under section 17O(6) above; and
    - (b) on the application of the Commission,direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 17O(8) above) shall be extended by fourteen days.
  - (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 17O(6)(a) above as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
  - (4) If the Commission gives a direction under subsection (1) above, it shall—
    - (a) give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

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- (b) make such modifications itself of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
  - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
  - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 17O(8)(b) above.
- (5) In exercising its power under subsection (4)(b) above the Commission shall have regard to the matters as respects which duties are imposed on the Authority by Part 1 of this Act.
- (6) Before making modifications under subsection (4)(b) above the Commission shall give notice—
  - (a) stating that it proposes to make the modifications and setting them out;
  - (b) stating the reason why it proposes to make them;
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) above shall be given—
  - (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications;
  - (b) by serving a copy of the notice on—
    - (i) the Authority;
    - (ii) the holder of the licence in question or, as the case may be, the relevant licence holders;
    - (iii) the Council;
    - (iv) the Secretary of State;
    - (v) the Assembly; and
    - (vi) the Chief Inspector of Drinking Water.
- (8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where, in consequence of a reference under section 17K(2) above, the Commission modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.

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- (11) Where, in consequence of a reference under section 17K(2) above, the Commission modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority shall—
- (a) make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time, and
  - (b) publish the modifications made for those purposes in such manner as it considers appropriate.

### **Section 17P: supplementary**

- 17Q(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8) of section 17P above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 17P above, or publishing any notice under subsection (8) of that section, the Commission must have regard to the following considerations before disclosing any information.
  - (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
  - (4) The second consideration is the need to exclude from disclosure (so far as practicable)—
    - (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
    - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
  - (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.
  - (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8) below, for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under section 17P above, as they apply for the purposes of any investigation on references under that Part—
    - (a) section 109 (attendance of witnesses and production of documents etc);
    - (b) section 110 (enforcement of powers under section 109: general);
    - (c) section 111 (penalties);
    - (d) section 112 (penalties: main procedural requirements);
    - (e) section 113 (payments and interest by instalments);
    - (f) section 114 (appeals in relation to penalties);
    - (g) section 115 (recovery of penalties); and
    - (h) section 116 (statement of policy).



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- (7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—
- (a) subsection (2) were omitted,
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the Commission under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the Commission under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.
- (10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

#### **Water supply licences: modification by order under other enactments**

- 17R(1) Where the OFT, the Commission or the Secretary of State (the “relevant authority”) makes a relevant order, the order may also provide for the modification of—
- (a) the conditions of a particular retail licence or combined licence; or
  - (b) the standard conditions of retail licences or combined licences,
- to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—

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- (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a retail licence or combined licence.
- (3) The modification under subsection (1)(a) above of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (4) Where at any time the relevant authority modifies under subsection (1)(b) above the standard conditions of retail licences or combined licences, the relevant authority—
- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
  - (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences of that description granted before that time.
- (5) Where at any time the relevant authority modifies standard conditions of retail licences or combined licences under subsection (4)(a) above for the purposes of their incorporation in licences, the relevant authority shall publish those modifications in such manner as the relevant authority considers appropriate.
- (6) Expressions used in subsection (2) above and in Part 3 or 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.”

**Commencement Information**

- I12** Sch. 4 para. 2 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(1)(i), Sch. 1 (with Sch. 3 para. 7)
- I13** Sch. 4 para. 2 in force at 1.8.2005 for specified purposes by S.I. 2005/968, art. 3(b)(i)

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## “CHAPTER 2A

### SUPPLY DUTIES ETC: LICENSED WATER SUPPLIERS

#### *Duty of undertaker to supply licensed water supplier etc*

#### **Wholesale water supply by primary water undertaker**

66A(1) This section applies where—

- (a) a licensed water supplier requests its primary water undertaker to provide it with a supply of water for the purpose of supplying water to the premises of its customers in accordance with the retail authorisation; and
  - (b) the premises are in the area of the undertaker.
- (2) Where this section applies, it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
- (a) to take any such steps—
    - (i) for the purpose of connecting the premises in question with the undertaker’s supply system; or
    - (ii) in respect of that system,
 as may be so provided for in order to enable the undertaker to provide the requested supply; and
  - (b) having taken any such steps, to provide that supply.
- (3) A primary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier, or to take any steps to enable it to provide such a supply, if—
- (a) both of the first and second conditions are satisfied; or
  - (b) the third condition is satisfied.
- (4) The first condition is that—
- (a) the premises to be supplied by the supplier do not consist in the whole or any part of a building; or
  - (b) the supply to be made by it to those premises is for purposes other than domestic purposes.
- (5) The second condition is that the provision of the supply by the undertaker would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

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- (6) The third condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
  - (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.
- (7) Where—
- (a) a request has been made by a licensed water supplier to its primary water undertaker for the purposes of subsection (1) above; and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.
- (8) A water undertaker is the primary water undertaker of a licensed water supplier for the purposes of this section and section 66C below if the undertaker's supply system is to be used for the purpose of making the supply to premises mentioned in those sections.
- (9) In this section and sections 66B and 66C below—
- (a) any reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above; and
  - (b) any reference to the retail authorisation shall be construed in accordance with section 17A(2) above.

### **Introduction of water into water undertaker's supply system**

66B (1) This section applies where—

- (a) a qualifying licensed water supplier requests a water undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and
  - (b) the premises are in the area of the undertaker.
- (2) This section also applies where—
- (a) a water undertaker agrees to permit a qualifying licensed water supplier to introduce water into the undertaker's treatment works;
  - (b) in connection with that introduction, the supplier requests the undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and
  - (c) the premises are in the area of the undertaker.

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- (3) Where this section applies, it shall be the duty of the water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
- (a) to take any such steps—
    - (i) for the purpose of connecting the premises in question with the undertaker’s supply system;
    - (ii) for the purpose of connecting the treatment works of the qualifying licensed water supplier with that system (in a case falling within subsection (1) above);
    - (iii) for the purpose of connecting with that system any source used by the qualifying licensed water supplier for the purpose of supplying water other than for domestic or food production purposes (in a case falling within subsection (1) above); or
    - (iv) in respect of that system, as may be so provided for in order to enable the supplier to make the requested introduction of the water into that system; and
  - (b) having taken any such steps, to permit the requested introduction of the water into that system.
- (4) A water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable a qualifying water supplier to make such an introduction, if the first or second condition is satisfied.
- (5) The first condition is that permitting the introduction of the water into the water undertaker’s supply system would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
  - (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.
- (7) Where—
- (a) a request has been made by a qualifying licensed water supplier to a water undertaker for the purposes of subsection (1) or (2) above; and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

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the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

- (8) In this section “treatment works”—
- (a) in relation to a water undertaker, means the works designated as treatment works by the Secretary of State for the purposes of section 17B(6) above;
  - (b) in relation to a qualifying licensed water supplier, means the works designated from time to time by the Secretary of State as treatment works for the purposes of this paragraph.
- (9) Before designating any works for the purposes of subsection (8)(b) above, the Secretary of State shall consult the Assembly.
- (10) A list of any works designated for the purposes of subsection (8)(b) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.
- (11) Any pipe laid in pursuance of subsection (3)(a)(ii) or (iii) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
- (12) In this section and section 66C below, references to a qualifying licensed water supplier are references to a licensed water supplier which is the holder of a combined licence (within the meaning of Chapter 1A of Part 2 of this Act).

### **Wholesale water supply by secondary water undertaker**

66C (1) This section applies where—

- (a) a qualifying licensed water supplier—
    - (i) requests a water undertaker other than its primary water undertaker (the “secondary water undertaker”) to provide a supply of water for the purpose of the supplier supplying water, using the primary water undertaker’s supply system, to the premises of the supplier’s customers in accordance with the retail authorisation; and
    - (ii) requests its primary water undertaker to permit it to introduce that water into its supply system; and
  - (b) the premises are in the area of the primary water undertaker.
- (2) Where this section applies—
- (a) it shall be the duty of the secondary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
    - (i) to take any such steps in respect of its supply system as may be so provided for in order to enable it to provide the requested supply; and
    - (ii) having taken any such steps, to provide that supply; and

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- (b) it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
  - (i) to take any such steps specified in subsection (3) below as may be so provided for in order to enable the licensed water supplier to make the introduction of the requested supply of water into the primary water undertaker’s supply system; and
  - (ii) having taken any such steps, to permit the introduction of that supply of water into that supply system.
- (3) The steps mentioned in subsection (2)(b)(i) above are steps—
  - (a) for the purpose of connecting the premises in question with the primary water undertaker’s supply system;
  - (b) for the purpose of connecting that system with the secondary water undertaker’s supply system; or
  - (c) in respect of the primary water undertaker’s supply system.
- (4) If the first or second condition is satisfied—
  - (a) a secondary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier; and
  - (b) a primary water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable the licensed water supplier to make such an introduction.
- (5) The first condition is that the provision of the supply or permitting the introduction would—
  - (a) require the undertaker in question, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) This second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
  - (a) the supply of water to the premises to be supplied by the supplier; or
  - (b) the use of water in those premises,
 of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.
- (7) Where—
  - (a) requests have been made by a licensed water supplier to its primary water undertaker and secondary water undertaker for the purposes of subsection (1) above; and
  - (b) the steps which either of those undertakers is required to take by virtue of the request made to it include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

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the undertaker's failure to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

- (8) Any pipe laid in pursuance of subsection (2)(b)(i) above by virtue of subsection (3)(b) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.

### **Sections 66A to 66C: determinations and agreements**

66D(1) The Authority may determine, in a case referred to it by a licensed water supplier, whether any condition specified in section 66A(4) to (6), 66B(5) or (6) or 66C(5) or (6) above is satisfied (subject to section 66F below).

- (2) The period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are—
- (a) those which are—
- (i) in a case falling within section 66A(2) or 66B(3) above, agreed between the water undertaker and the licensed water supplier in question; and
- (ii) in a case falling within section 66C(2) above, agreed between the water undertakers and the licensed water supplier in question; or
- (b) in default of such agreement, those which are determined by the Authority, in a case referred to it by the licensed water supplier in question, if they are acceptable to the supplier,

(subject to the following provisions of this section and sections 66E and 66F below).

- (3) The charges payable by a licensed water supplier to a water undertaker under an agreement under paragraph (a)(i) or (ii) of subsection (2) above or a determination under paragraph (b) of that subsection shall be fixed in accordance with the costs principle set out in section 66E below.
- (4) The Authority shall issue guidance in accordance with which the terms and conditions of an agreement under paragraph (a)(i) or (ii) of subsection (2) above shall be made.
- (5) Before issuing guidance under subsection (4) above, the Authority shall consult such persons as it considers appropriate.
- (6) The guidance issued under subsection (4) above shall include guidance with respect to the fixing of charges in accordance with subsection (3) above.
- (7) Subsection (8) below applies if it appears to the Authority that an agreement under paragraph (a)(i) or (ii) of subsection (2) above has not been made in accordance with—
- (a) subsection (3) above; or
- (b) the guidance issued under subsection (4) above.
- (8) The Authority may require the parties to the agreement to—
- (a) modify the agreement; or



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- (b) terminate the agreement,  
and that requirement shall be enforceable under section 18 above by the Authority.
- (9) Neither the OFT nor the Authority may exercise, in respect of an agreement under paragraph (a)(i) or (ii) of subsection (2) above, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements); and
  - (b) subsection (2) of section 35 of that Act (interim directions).
- (10) Subsection (9)(b) above does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement under paragraph (a)(i) or (ii) of subsection (2) above; and
  - (b) in respect of which subsection (1)(b) of section 35 of that Act applies.

#### **Section 66D: costs principle**

- 66E (1) The costs principle referred to in subsection (3) of section 66D above is that the charges payable by a licensed water supplier to a water undertaker, under the agreement or determination mentioned in that subsection, shall enable the undertaker to recover from the supplier—
- (a) any expenses reasonably incurred in performing any duty under sections 66A to 66C above in accordance with that agreement or determination, and
  - (b) the appropriate amount in respect of qualifying expenses and a reasonable return on that amount,
- to the extent that those sums exceed any financial benefits which the undertaker receives as a result of the supplier supplying water to the premises of relevant customers.
- (2) In subsection (1) above “qualifying expenses” means expenses (whether of a capital nature or otherwise) that the water undertaker has reasonably incurred or will reasonably incur in carrying out its functions.
  - (3) For the purposes of subsection (1)(b) above, the appropriate amount is the amount which the water undertaker—
    - (a) reasonably expected to recover from relevant customers; but
    - (b) is unable to recover from those customers as a result of their premises being supplied with water by the licensed water supplier.
  - (4) Nothing in subsection (3) above shall enable a water undertaker to recover any amount—
    - (a) to the extent that any expenses can be reduced or avoided; or
    - (b) to the extent that any amount is recoverable in some other way (other than from other customers of the undertaker).
  - (5) In this section “relevant customers” means customers to whose premises the licensed water supplier is to make any supply of water in connection with

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which the agreement or determination mentioned in subsection (1) above is made.

### **Section 66D: supplementary**

66F (1) Before the Authority makes—

- (a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66B(5) or (6) above is satisfied; or
  - (b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which a water undertaker is to perform any duty under section 66B above,
- it shall consult the Secretary of State (subject to subsection (3) below).

(2) Before the Authority makes—

- (a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66C(5) or (6) is satisfied; or
- (b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which the water undertakers are to perform any duty under section 66C above,

it shall consult the Secretary of State (subject to subsections (3) and (4) below) and the Environment Agency.

(3) If—

- (a) a determination mentioned in subsection (1) or (2) above is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales; and
- (b) in the case of a determination mentioned in subsection (2) above, the area of the secondary water undertaker in question is wholly or mainly in Wales,

the Authority shall consult the Assembly (and not the Secretary of State).

(4) If a determination mentioned in subsection (2) above—

- (a) is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in—
  - (i) England; or
  - (ii) Wales;
- (b) but the area of the secondary water undertaker in question is (respectively) wholly or mainly in—
  - (i) Wales; or
  - (ii) England,

the Authority shall consult the Assembly (as well as the Secretary of State).

(5) The Authority shall publish guidance issued under section 66D(4) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) The Authority may from time to time revise the guidance so issued.

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- (7) Before revising any guidance under subsection (6) above, the Authority shall consult such persons as it considers appropriate.
- (8) Subsection (5) above applies to guidance revised under subsection (6) above as it applies to guidance issued under section 66D(4) above.
- (9) In this section, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.
- (10) Where the period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are determined in accordance with subsection (2)(b) of section 66D above, they shall have effect as if they had been agreed between the parties in question (and references in the following provisions of this Act to an agreement under that section shall be construed accordingly).

### **Designation of strategic supply**

- 66G(1) Subsection (2) below applies if at any time the Authority determines that an introduction of water which a water undertaker is required to permit under section 66B or 66C above in accordance with an agreement under section 66D above constitutes a strategic supply of water.
- (2) The Authority shall designate the introduction as a strategic supply.
  - (3) Subsection (4) below applies if—
    - (a) a water undertaker requests the Authority to make a determination that an introduction of water constitutes a strategic supply for the purposes of subsection (1) above, or
    - (b) the Authority otherwise proposes to make a determination that an introduction of water constitutes a strategic supply for the purposes of that subsection.
  - (4) The Authority shall give notice of the request or proposed determination to—
    - (a) the Secretary of State;
    - (b) the Assembly;
    - (c) the Environment Agency;
    - (d) the other party or parties, or the parties, to the agreement under section 66D above; and
    - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
  - (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
  - (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.
  - (7) If the Authority determines that an introduction designated under this section as a strategic supply no longer constitutes such a supply, it shall cancel its designation.

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- (8) If the Authority proposes to make a determination under subsection (7) above that an introduction no longer constitutes a strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, an introduction of water is a strategic supply if, without that introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers as well as supplying customers of the licensed water supplier in question with water for domestic purposes.

### **Designation of collective strategic supply**

- 66H(1) Subsection (2) below applies if at any time the Authority determines that two or more introductions of water—
- (a) which are made by a licensed water supplier; and
  - (b) which a water undertaker is required to permit under section 66B or 66C above in accordance with agreements under section 66D above, constitute a collective strategic supply of water.
- (2) The Authority shall designate the introductions as a collective strategic supply.
- (3) Subsection (4) below applies if—
- (a) a water undertaker requests the Authority to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of subsection (1) above, or
  - (b) the Authority otherwise proposes to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of that subsection.
- (4) The Authority shall give notice of the request or proposed determination to—
- (a) the Secretary of State;
  - (b) the Assembly;
  - (c) the Environment Agency;
  - (d) the other party or parties, or the parties, to the agreements under section 66D above; and
  - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.

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- (7) If the Authority determines that introductions designated under this section as a collective strategic supply no longer constitute such a supply, it shall cancel their designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that introductions no longer constitute a collective strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, introductions of water are a collective strategic supply if, without those introductions being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers as well as supplying the customers of the licensed water supplier in question with water for domestic purposes.

### *Offences*

#### **Prohibition on unauthorised use of supply system**

- 66I (1) Subject to subsections (2) and (3) and section 66K below, no person shall use a water undertaker's supply system for the purpose of supplying water to any premises of a customer.
- (2) Subsection (1) above shall not apply where the supply is made—
    - (a) by the water undertaker, or
    - (b) by a licensed water supplier in pursuance of its licence.
  - (3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.
  - (4) A person who contravenes subsection (1) above shall be guilty of an offence.
  - (5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.
  - (6) A person guilty of an offence under this section shall be liable—
    - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
    - (b) on conviction on indictment, to a fine.
  - (7) No proceedings for an offence under this section shall be instituted except by—
    - (a) the Secretary of State, or
    - (b) the Authority.
  - (8) The functions of—
    - (a) making regulations under subsection (3) above; and
    - (b) instituting proceedings under subsection (7)(a) above,

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are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

- (9) In this section and sections 66J and 66L below, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.

### **Prohibition on unauthorised introduction of water**

66J (1) Subject to subsections (2) and (3) and section 66K below, no person shall introduce water into a water undertaker's supply system (other than the undertaker itself).

- (2) Subsection (1) above shall not apply where the water is introduced—
- (a) by a licensed water supplier in pursuance of its licence, or
  - (b) by another water undertaker under an agreement for a supply of water in bulk.
- (3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.
- (4) A person who contravenes subsection (1) above shall be guilty of an offence.
- (5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (7) For the purposes of section 210 below, the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.
- (8) No proceedings for an offence under this section shall be instituted except by—
- (a) the Secretary of State; or
  - (b) the Authority.
- (9) The functions of—
- (a) making regulations under subsection (3) above; and
  - (b) instituting proceedings under subsection (8)(a) above,
- are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

### **Sections 66I and 66J: exemptions**

- 66K(1) The Secretary of State may by order made by statutory instrument grant exemption from section 66I(1) or 66J(1) above to—
- (a) a person or persons of a class;
  - (b) generally or to such extent as may be specified in the order; and

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- (c) unconditionally or subject to such conditions as may be so specified.
- (2) Before making an order under subsection (1) above the Secretary of State shall give notice—
- (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
  - (b) stating the reasons why he proposes to make the order in the terms proposed; and
  - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (3) The notice required by subsection (2) above shall be given—
- (a) by serving a copy of it on the Authority; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.
- (4) Notice of an exemption granted to a person shall be given—
- (a) by serving a copy of the exemption on him; and
  - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
- (a) persons of that class; and
  - (b) other persons who may be affected by it.
- (6) An exemption may be granted—
- (a) indefinitely; or
  - (b) for a period specified in, or determined by or under, the exemption.
- (7) Conditions included in an exemption by virtue of subsection (1)(c) above may, in particular, require any person carrying on any activity in pursuance of the exemption—
- (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
  - (b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
  - (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

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### **Section 66K: supplementary**

- 66L (1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a person under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (2) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to persons of a class under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) in accordance with any provision of the order by which the exemption was granted; or
  - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a class under section 66K(1) above from any person of that class—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (4) Before making an order under subsection (1)(b) or (c) or (2) above or giving a direction under subsection (3)(b) or (c) above, the Secretary of State shall—
- (a) consult the Authority; and
  - (b) give notice—
    - (i) stating that he proposes to make such an order or give such a direction;
    - (ii) stating the reasons why he proposes to make such an order or give such a direction; and
    - (iii) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (5) The notice under subsection (4) above shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c) above, by serving a copy of it on the person to whom the exemption was granted;



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- (b) where he is proposing to make an order under subsection (2) above, by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and
  - (c) where he is proposing to give a direction under subsection (3)(b) or (c) above, by serving a copy of it on the person from whom he proposes to withdraw the exemption.
- (6) A statutory instrument containing an order under subsection (1) or (2) above or subsection (1) of section 66K above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The power to—
- (a) make an order under subsection (1) or (2) above or subsection (1) of section 66K above; or
  - (b) give a direction under subsection (3) above,
- is exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.
- (8) Accordingly, subsections (1) to (5) above and section 66K above apply in relation to an order made or a direction given by the Assembly by virtue of subsection (7) above as they apply in relation to an order made or direction given by the Secretary of State.”

#### Commencement Information

**I14** Sch. 4 para. 3 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(l)(i), Sch. 1 (with Sch. 3 para. 7)

VALID FROM 01/12/2005

- 4
- (1) The Water Services Regulation Authority (“the Authority”) may, in accordance with this paragraph, modify the conditions of appointment of a company appointed under Chapter 1 of Part 2 of the WIA to be a water undertaker where it considers it necessary or expedient to do so in consequence of the amendments to the WIA made by this Schedule and Schedule 8.
  - (2) Where the Authority modifies under sub-paragraph (1) any conditions of appointment it may make such incidental or consequential modifications as it considers necessary or expedient of other conditions of the appointment.
  - (3) Before making any modifications under sub-paragraph (1) or (2), the Authority shall consult—
    - (a) the company holding the appointment, and
    - (b) such other persons (if any) as the Authority thinks it appropriate to consult.
  - (4) The powers of the Authority under sub-paragraphs (1) and (2) may not be exercised after the end of the period of two years beginning with the first day on which all of the provisions of this Schedule and Schedule 8.

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- (5) The Secretary of State may give directions to the Authority for the purpose of securing that conditions of appointment are modified in consequence of the amendments to the WIA made by this Schedule and Schedule 8; and the Authority shall comply with any such direction.

## SCHEDULE 5

Section 85(2)

### POWERS OF ENTRY UNDER THE COAL INDUSTRY ACT 1994

#### Commencement Information

**I15** Sch. 5 in force at 1.4.2004 by S.I. 2004/641, art. 3(w) (with Sch. 3 para. 7)

After Schedule 1 to the Coal Industry Act 1994 (c. 21) there is inserted—

#### “SCHEDULE 1A

Section 4B(8)

#### SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY

##### *Interpretation*

- 1 (1) In this Schedule—
- “designated person” means an authorised person, within the meaning of section 4B of this Act, and includes a person designated by virtue of paragraph 2 below;
- “relevant power” means a power conferred by section 4B of this Act, including a power exercisable by virtue of a warrant under this Schedule.
- (2) Expressions used in this Schedule and in section 4B of this Act have the same meaning in this Schedule as they have in that section.

##### *Issue of warrants*

- 2 (1) If it is shown to the satisfaction of a justice of the peace, on sworn information in writing—
- (a) that there are reasonable grounds for the exercise in relation to any premises of a relevant power; and
- (b) that one or more of the conditions specified in sub-paragraph (2) below is fulfilled in relation to those premises,
- the justice may by warrant authorise the Authority to designate a person who shall be authorised to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.
- (2) The conditions mentioned in sub-paragraph (1)(b) above are—
- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably expected;
- (c) that the premises are unoccupied; or

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- (d) that the occupier is temporarily absent from the premises and the case is one of urgency.
- (3) In a case where subsection (5) of section 4B of this Act applies, a justice of the peace shall not issue a warrant under this Schedule merely because he is satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably expected, unless he is also satisfied that the notice required by that subsection has been given and that the period of that notice has expired.
- (4) Every warrant under this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

*Manner of exercise of powers*

- 3 A person designated as the person who may exercise a relevant power shall produce evidence of his designation and other authority before he exercises the power.

*Duty to secure premises*

- 4 A person who, in the exercise of a relevant power, enters on any premises which are unoccupied or whose occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

*Compensation*

- 5 (1) Where any person exercises any power conferred by section 4B(3)(a) or (c) or (4) of this Act, it shall be the duty of the Authority to make full compensation to any person who has sustained loss or damage by reason of—
- (a) the exercise by the designated person of that power; or
  - (b) the performance of, or failure of the designated person to perform, the duty imposed by paragraph 4 above.
- (2) Compensation shall not be payable by virtue of sub-paragraph (1) above in respect of any loss or damage if the loss or damage is attributable to the default of the person who sustained it.
- (3) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator, appointed by agreement between the Authority and the person who claims to have sustained the loss or damage or, in default of agreement, by the Secretary of State.
- (4) A designated person shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of any relevant power if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it."

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## SCHEDULE 6

Section 85(2)

### COMPULSORY PURCHASE UNDER THE COAL INDUSTRY ACT 1994

#### Commencement Information

**I16** Sch. 6 in force at 1.4.2004 by S.I. 2004/641, art. 3(w) (with Sch. 3 para. 7)

After Schedule 1A to the Coal Industry Act 1994 (c. 21) (which is inserted by Schedule 5) there is inserted—

#### “SCHEDULE 1B

Section 4C(5)

#### MODIFICATION OF COMPENSATION PROVISIONS ETC IN RELATION TO THE CREATION OF NEW RIGHTS

##### *Compensation enactments*

- 1 Subject to the following provisions of this Schedule, the enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under section 4C of this Act of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

##### *Adaptation of the Compulsory Purchase Act 1965*

- 2 (1) The Compulsory Purchase Act 1965 (in the following provisions of this Schedule referred to as “the 1965 Act”) shall have effect with the modifications necessary to make it apply to the compulsory acquisition under section 4C of this Act of a right by the creation of a new right as it applies to the compulsory acquisition under that section of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—
  - (a) the right acquired or to be acquired; or
  - (b) the land over which the right is or is to be exercisable.
- (2) Without prejudice to the generality of sub-paragraph (1) above, Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under section 4C this Act of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

##### *Section 7 of the 1965 Act*

- 3 For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

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### *Section 8 of the 1965 Act*

- 4 For subsection (1) of section 8 of the 1965 Act (protection for vendor against severance of house, garden, etc) there shall be substituted the following subsections—

“(1) No person shall be required to grant any right over part only—

- (a) of any house, building or manufactory, or
- (b) of a park or garden belonging to a house,

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the Lands Tribunal determine that—

- (i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory, or
- (ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house,

and, if the Lands Tribunal so determine, the Tribunal shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

- (1A) In considering the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase.”

### *Effect of deed poll*

- 5 The following provisions of the 1965 Act (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land)—

- (a) section 9(4) (refusal by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

### *Section 11 of the 1965 Act*

- 6 Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) shall be modified correspondingly.

*Status: Point in time view as at 01/08/2005.*

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*Section 20 of the 1965 Act*

- 7 Section 20 of the 1965 Act (protection for interests of tenants at will etc) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under section 4C of this Act of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

*Section 22 of the 1965 Act*

- 8 Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue entitled to exercise the right acquired, subject to compliance with that section as respects compensation.”

SCHEDULE 7

Section 101(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

ABSTRACTION AND IMPOUNDING

*Water Resources Act 1991 (c. 57)*

- 1 The WRA is amended as follows.

**Commencement Information**

**I17** Sch. 7 para. 1 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

**I18** Sch. 7 para. 1 in force at 1.10.2004 for specified purposes by S.I. 2004/2528, art. 2(t)(i) (with Sch. para. 8)

- 2 In section 34 (regulations with respect to applications under Chapter 2 of Part 2)—
- (a) in subsection (1), after “particulars,” there is inserted “ be accompanied by such reports, ”,
  - (b) in subsection (2), at the end there is added “ , and provision for making such applications available for public inspection. ”.

**Commencement Information**

**I19** Sch. 7 para. 2 in force at 1.10.2004 by S.I. 2004/2528, art. 2(t)(i) (with Sch. para. 8)

*Status: Point in time view as at 01/08/2005.*

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VALID FROM 01/01/2018

- 3 In section 40 (obligations to take river flow etc into account), in subsection (4) (b), for “neither discrete waters nor waters comprised in an order under section 33 above” there is substituted “ not discrete waters ”.

VALID FROM 01/04/2006

- 4 In section 51 (modification of licence on application of licence holder), after subsection (2) there is inserted—  
 “(2A) An application may not be made under subsection (2) above to convert an abstraction licence of one type into an abstraction licence of a different type.”

VALID FROM 01/01/2018

- 5 In section 57 (emergency variation of licences for spray irrigation purposes), in subsection (3), for “neither discrete waters nor inland waters comprised in an order under section 33 above” there is substituted “ not discrete waters ”.

- 6 In section 61 (compensation for licence modified on direction of Secretary of State), in subsection (1), for “55” there is substituted “ 56 ”.

**Commencement Information**

**I20** Sch. 7 para. 6 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

VALID FROM 01/04/2006

- 7 In section 66 (inland waters owned or managed by British Waterways Board), subsection (2)(a) is omitted.

VALID FROM 01/04/2006

- 8 (1) Section 67 (ecclesiastical property) is amended as follows.  
 (2) In subsections (1) and (2), after “Where the relevant land belongs to a benefice” there is inserted “ or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land ”.  
 (3) In subsection (8), in the definition of “the relevant land”, for paragraph (a) there is substituted—  
 “(a) the land to which an applicant for a licence to abstract water is required by section 35 above to have a right of access; or”.

**Status:** Point in time view as at 01/08/2005.

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VALID FROM 01/01/2018

- 9 In section 71 (modification of local enactments), in subsection (4), “33,” is omitted.

VALID FROM 01/04/2006

- 10 In section 125 (specific exemptions from water resources charges), subsection (2) is omitted.

VALID FROM 01/04/2006

- 11 In section 206 (making of false statements etc), in subsection (1), after “Act” there is inserted “ or of section 3, 4 or 10 of the Water Act 2003 ”.

VALID FROM 01/04/2006

- 12 In section 217 (criminal liabilities of directors and other third parties), in subsection (1), after “this Act” there is inserted “ or under section 4 of the Water Act 2003 ”.

VALID FROM 01/04/2006

- 13 In section 222 (Crown application), as substituted by paragraph 2(4) of Schedule 21 to the Environment Act 1995 (c. 25), after subsection (10) there is added—  
“(11) This section shall apply in relation to sections 3, 4 and 10 of the Water Act 2003 as it applies in relation to the provisions of this Act.”

- 14 For Schedule 6 (which relates to the making of orders providing for exemption from restrictions on abstraction) there is substituted—

“SCHEDULE 6

Sections 27A(4) and  
39B(7)

ORDERS RELATING TO ABSTRACTION OF SMALL QUANTITIES  
AND COMPULSORY REGISTRATION OF PROTECTED RIGHTS

*Notice of draft order*

- 1 (1) An application to the Secretary of State for an order under section 27A(1) or 39B(3) of this Act (an “order”) shall be accompanied by a draft of the proposed order.
- (2) Before submitting a draft order to the Secretary of State, the Agency shall publish a notice—
- (a) stating the general effect of the draft order;



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- (b) specifying the place where a copy of the draft order, and of any relevant map or plan, may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of first publication of the notice; and
  - (c) stating that any person may within that period, by notice to the Secretary of State, object to the making of the order.
- (3) A notice under this paragraph shall be published either—
- (a) at least once in each of two successive weeks, in one or more newspapers circulating in the area to which the draft order relates; or
  - (b) in any other manner which, in any particular case, may be certified by the Secretary of State to be expedient in that case.
- (4) Not later than the date on which the notice is first published in pursuance of sub-paragraph (2) above, the Agency shall serve a copy of the notice on—
- (a) every local authority (in its capacity as the local planning authority), joint planning board or National Park authority whose area consists of, includes or is included in the area to which the draft order relates;
  - (b) any relevant water undertaker;
  - (c) any internal drainage board—
    - (i) whose district consists of, includes or is included in the area to which the draft order relates;
    - (ii) from whose district water is discharged into any relevant source of supply; or
    - (iii) into whose district water is discharged from any relevant source of supply;
  - (d) any navigation authority, harbour authority or conservancy authority having functions in relation to—
    - (i) any relevant source of supply; or
    - (ii) any related inland waters;
  - (e) if a relevant source of supply or related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, the Secretary of State for Transport;
  - (f) any person authorised by a licence under Part 1 of the Electricity Act 1989 to generate electricity who is (in that capacity) the holder of a licence to abstract water under Chapter 2 of Part 2 of this Act from—
    - (i) any relevant source of supply; or
    - (ii) any related inland waters;
  - (g) English Nature, if the area to which the order relates is or includes England, or part of it;
  - (h) the Countryside Council for Wales, if the area to which the order relates is or includes Wales, or part of it; and
  - (i) the Broads Authority (established under the Norfolk and Suffolk Broads Act 1988), if the area to which the order relates is or includes the Broads (as defined in that Act), or part of it.
- (5) Where an application for an order is made, the Agency shall also publish a notice in the London Gazette—

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- (a) stating that the draft order has been submitted to the Secretary of State;
  - (b) naming the areas of each of the authorities or boards in respect of which a copy of the notice is required to be served under sub-paragraph (4)(a) above;
  - (c) specifying a place where a copy of the draft order and of any relevant map or plan may be inspected; and
  - (d) where the notice required by sub-paragraph (2) above is published in a newspaper, giving the name of the newspaper and the date of an issue containing the notice.
- (6) In this paragraph—
- (a) where a draft order makes provision generally (rather than for a specified geographical area), references to the area to which the order relates are to the whole area (whether England, Wales or both of them) in relation to which the order is applied;
  - (b) references to a National Park authority are to a National Park authority established under Part 3 of the 1995 Act;
  - (c) a “relevant source of supply”, in relation to a draft order, means—
    - (i) if the draft order relates only to particular sources of supply (or a class of them) in an area, any of those sources of supply (or any source of supply in that class) in that area;
    - (ii) otherwise, any source of supply in the area to which the draft order relates;
  - (d) a “relevant water undertaker”, in relation to a draft order, means a water undertaker which is the holder of a licence to abstract water under Chapter 2 of Part 2 of this Act from—
    - (i) a relevant source of supply; or
    - (ii) a source of supply which is related to a relevant source of supply;
  - (e) for the purposes of paragraph (d) above, a source of supply (the “related source”) is related to a relevant source of supply if it appears to the Agency that, having regard to the extent to which the level or flow of water in the related source depends on the level or flow of the waters in the relevant source of supply, the ability of the water undertaker to abstract water from the related source in accordance with its licence may be substantially affected as a result of the draft order;
  - (f) “related inland waters” are inland waters the level or flow of which may, in the Agency’s opinion, be affected by changes in the level or flow of the waters in a relevant source of supply.

*Duty to provide copy of draft order*

- 2 Where an application for an order is made, the Agency shall, at the request of any person, furnish him with a copy of the draft order on payment of such charge as the Agency thinks reasonable.

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### *Making of order*

- 3 (1) Where an application for an order is made, the Secretary of State may make the order either in the form of the draft or in that form as altered in such manner as he thinks fit.
- (2) Where the Secretary of State—
- (a) proposes to make any alteration of an order before making it; and
  - (b) considers that any persons are likely to be adversely affected by it,
- the Agency shall give and publish such additional notices, in such manner, as the Secretary of State may require.
- (3) Sub-paragraph (4) below shall apply if before the end of—
- (a) the period of twenty-eight days referred to in sub-paragraph (2)(b) of paragraph 1 above;
  - (b) the period of twenty-five days from the publication in the London Gazette of the notice under sub-paragraph (5) of that paragraph; or
  - (c) any period specified in notices under sub-paragraph (2) above,
- notice of an objection is received by the Secretary of State from any person on whom a notice is required by this Schedule to be served, from any other person appearing to the Secretary of State to be affected by the order (either as prepared in draft or as proposed to be altered) or, in a case where the Secretary of State directed the Agency to apply for the order, from the Agency.
- (4) Where this sub-paragraph applies and the objection in question is not withdrawn, the Secretary of State, before making the order, may take such steps as he sees fit and, in particular, may—
- (a) cause a local inquiry to be held; or
  - (b) afford to the objector and to the Agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Where—
- (a) the order (whether as prepared in draft or as proposed to be altered) relates to any tidal water situated in Wales (or in an area of the sea adjoining either the coast of Wales or an area of sea forming part of Wales); and
  - (b) no navigation authority, harbour authority or conservancy authority has functions in relation to that tidal water,
- the Secretary of State shall not make the order except with the approval of the Secretary of State for Transport.

### *Notice and inspection of final order*

- 4 (1) Where an order is made under section 27A(1) or 39B(3) of this Act, whether in the form of the draft proposed by the Agency or with alterations, the Secretary of State shall give notice to the Agency—
- (a) stating that the order has been made, either without alteration or with alterations specified in the notice; and

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- (b) specifying the date (not being earlier than twenty-eight days after the date of the notice under this paragraph) on which the order shall have effect;
- and the Agency shall forthwith publish the notice.
- (2) The Agency shall keep a copy of every order made under section 27A(1) or 39B(3) of this Act available at its offices for inspection by the public, free of charge, at all reasonable times.”

#### Commencement Information

**I21** Sch. 7 para. 14 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

VALID FROM 01/04/2006

#### *Environment Act 1995 (c. 25)*

- 15 (1) The Environment Act 1995 is amended as follows.
- (2) In section 6 (general provisions with respect to water), after subsection (3) there is inserted—
- “(3A) Subsection (3) above shall apply to—
- (a) sections 3 and 4 of the Water Act 2003; and
- (b) such of the related water resources provisions as apply in relation to those sections by virtue of section 33(2) of the Water Act 2003, as it applies to the provisions referred to in that subsection.”
- (3) In Schedule 22 (amendment of enactments), paragraph 181 is omitted.

## PART 2

### NEW REGULATORY ARRANGEMENTS, ETC

VALID FROM 01/10/2005

#### *Public Records Act 1958 (c. 51)*

- 16 In Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place in Part 2 of the Table at the end of paragraph 3 there is inserted— “Consumer Council for Water.”

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VALID FROM 01/10/2005

*Public Bodies (Admission to Meetings) Act 1960 (c. 67)*

- 17 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960 (bodies to which Act applies), for paragraph 1(k) there is substituted—
- “(k) regional committees of the Consumer Council for Water established under section 27A of the Water Industry Act 1991.”

VALID FROM 01/10/2005

*Parliamentary Commissioner Act 1967 (c. 13)*

- 18 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation)—
- (a) there is inserted at the appropriate places— “ Consumer Council for Water. ” “ Water Services Regulation Authority. ”, and
- (b) the entry relating to the Office of the Director General of Water Services is omitted.

VALID FROM 01/10/2005

*Superannuation Act 1972 (c. 11)*

- 19 In Schedule 1 to the Superannuation Act 1972, in the list of “Other Bodies” there is inserted at the appropriate place— “ The Consumer Council for Water. ”

VALID FROM 01/10/2005

*House of Commons Disqualification Act 1975 (c. 24)*

- 20 (1) Schedule 1 to the House of Commons Disqualification Act 1975 is amended as follows.
- (2) In Part 2 (bodies of which all members are disqualified), there is inserted at the appropriate places— “ The Consumer Council for Water, and each regional committee of the Council established under section 27A of the Water Industry Act 1991. ” “ The Water Services Regulation Authority. ”
- (3) In Part 3 (other disqualifying offices), the entries relating to the following are omitted—
- (a) the Chairman of a customer service committee maintained under section 28 of the Water Industry Act 1991, and
- (b) the Director General of Water Services.

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VALID FROM 01/10/2005

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 21 (1) Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 is amended as follows.
- (2) In Part 2 (bodies of which all members are disqualified), there is inserted at the appropriate places— “ The Consumer Council for Water, and each regional committee of the Council established under section 27A of the Water Industry Act 1991. ” “ The Water Services Regulation Authority. ”
- (3) In Part 3 (other disqualifying offices), the entries relating to the following are omitted—
- (a) the Chairman of a customer service committee maintained under section 28 of the Water Industry Act 1991, and
  - (b) the Director General of Water Services.

VALID FROM 01/10/2005

*Race Relations Act 1976 (c. 74)*

- 22 In Part 2 of Schedule 1A to the Race Relations Act 1976 (bodies and other persons subject to general statutory duty), for the entry relating to a Customer Service Committee maintained under section 28 of the Water Industry Act 1991 there is substituted— “ The Consumer Council for Water. ”

*Telecommunications Act 1984 (c. 12)*

- 23 In the Telecommunications Act 1984, in section 101 (restriction on disclosure of information)—
- (a) in subsection (2)(b), for “the Director General of Water Services” there is substituted “ the Water Services Regulation Authority ”,
  - (b) in subsection (3)(j), at the end there is inserted “ , or the Water Act 2003 ”.

**Commencement Information**

**I22** Sch. 7 para. 23(b) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

*Airports Act 1986 (c. 31)*

- 24 In the Airports Act 1986, in section 74 (restriction on disclosure of information)—
- (a) in subsection (2)(a), for “the Director General of Water Services” there is substituted “ the Water Services Regulation Authority ”,
  - (b) in subsection (3)(k), at the end there is inserted “ , or the Water Act 2003 ”.

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**Commencement Information**

**I23** Sch. 7 para. 24(b) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

VALID FROM 01/04/2006

*Company Directors Disqualification Act 1986 (c. 46)*

- 25 In section 9E of the Company Directors Disqualification Act 1986 (interpretation for the purposes of sections 9A to 9D of that Act), in subsection (2), for paragraph (c) there is substituted—  
 “(c) the Water Services Regulation Authority;”.

*Water Act 1989 (c. 15)*

- 26 (1) The Water Act 1989 is amended as follows.
- (2) In section 174 (general restrictions on disclosure of information)—
- (a) in subsection (2)—
    - (i) in paragraph (a)—
      - (a) for “the Director” there is substituted “ the Water Services Regulation Authority, the Consumer Council for Water ”,
      - (b) for “or the Environment Act 1995” there is substituted “ , the Environment Act 1995 or the Water Act 2003 ”,
    - (ii) in paragraph (c), for “or of any arrangements” to the end there is substituted “ or section 27H of the Water Industry Act 1991 ”,
    - (iii) in paragraph (j), after “1995” there is inserted “ , the Water Act 2003 ”,
  - (b) in subsection (4)(a)—
    - (i) for “the Director” there is substituted “ the Water Services Regulation Authority ”,
    - (ii) for “a customer service committee” there is substituted “ the Consumer Council for Water (or any regional committee of that Council established under section 27A of the Water Industry Act 1991) ”.
- (3) In section 185 (powers to make regulations), in subsection (2), paragraph (a) is omitted.
- (4) In Schedule 3 (Director General of Water Services), paragraphs 6 and 7 are omitted.
- (5) In Schedule 4 (customer service committees), paragraph 6 is omitted.
- (6) In Schedule 25 (amendment of enactments), paragraphs 68(2)(a) and 76(a) are omitted.

**Commencement Information**

**I24** Sch. 7 para. 26(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

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| <b>I25</b> | Sch. 7 para. 26(2)(a)(i)(b) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), <b>Sch. 2</b> (with Sch. 3 para. 7) |
| <b>I26</b> | Sch. 7 para. 26(2)(a)(iii) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), <b>Sch. 2</b> (with Sch. 3 para. 7)  |

*Water Industry Act 1991 (c. 56)*

- 27 (1) The WIA is amended as follows.
- (2) In section 35 (construction of merger provisions), whose insertion into the WIA is provided for by section 70(1) of the Enterprise Act 2002 (c. 40), in subsection (1), in the definition of “water enterprise”, for “water undertaker” there is substituted “relevant undertaker”.
- (3) In section 86A(2)(a) and 116A(2)(a) (procedures for dealing with complaints), for “customer service committee” there is substituted “regional committee”.
- (4) In section 181 (complaints with respect to the exercise of works powers on private land), in subsection (2)(c), for “the appropriate customer service committee” there is substituted “the Council”.
- (5) In section 206 (restrictions on disclosure of information)—
- (a) in subsection (3)—
- (i) in paragraph (a), before “, the Competition Commission” there is inserted “, the Council”;
- (ii) in that paragraph, for “or regulations under section 2 of the Pollution Prevention and Control Act 1999” there is substituted “, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003”;
- (iii) in paragraph (b), for “or the Water Act 1989” there is substituted “, the Water Act 1989 or the Water Act 2003”;
- (iv) in paragraph (c), for “of any arrangements made by the Director under section 29(6) above or of any duty imposed by” there is substituted “of any duty imposed by section 27H above or”;
- (v) in paragraph (j)—
- (a) after “the Water Act 1989” there is inserted “, the Water Act 2003”;
- (b) for “or that Act of 1989” there is substituted “, the Water Act 1989 or the Water Act 2003”;
- (b) in subsection (4)(a)—
- (i) for “a customer service committee” there is substituted “the Council (or any regional committee)”;
- (ii) for “or regulations under section 2 of the Pollution Prevention and Control Act 1999” there is substituted “, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003”.
- (6) In section 208 (directions in the interests of national security), after subsection (3) there is inserted—
- “(3A) The Secretary of State may, after consultation with the Council, give to the Council such directions of a general character as appear to the Secretary of State to be requisite or expedient—
- (a) in the interests of national security; or



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- (b) in connection with any civil emergency which may occur.
- (3B) If it appears to the Secretary of State to be requisite or expedient to do so—
- (a) in the interests of national security; or
- (b) in connection with any civil emergency which has occurred or may occur,
- he may, after consultation with the Council, give to the Council a direction requiring it to do, or not to do, a particular thing specified in the direction.
- (3C) The Council shall comply with any direction given to it by the Secretary of State under this section.”
- (7) In section 219(1) (interpretation)—
- (a) after the definition of “analyse” there is inserted—
- ““the Assembly” means the National Assembly for Wales;”,
- ““the Authority” means the Water Services Regulation Authority;”,
- (b) after the definition of “contravention” there is inserted—
- ““the Council” means the Consumer Council for Water;”,
- (c) the definition of “the Director” is omitted,
- (d) after the definition of “records” there is inserted—
- ““regional committee” means a regional committee of the Council established under section 27A above;”.

#### Commencement Information

- I27** Sch. 7 para. 27(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- I28** Sch. 7 para. 27(1) in force at 1.8.2005 for specified purposes by S.I. 2005/968, art. 3(d)
- I29** Sch. 7 para. 27(2) in force at 29.12.2004 by S.I. 2004/2528, art. 3 (with Sch. para. 8)
- I30** Sch. 7 para. 27(5)(a)(ii)(iii)(v)(b)(ii)(7)(a) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- I31** Sch. 7 para. 27(7)(b) in force at 1.8.2005 by S.I. 2005/968, art. 3(d)

#### *Water Resources Act 1991 (c. 57)*

- 28 (1) The WRA is amended as follows.
- (2) In section 20 (water resources management schemes), in subsection (2)(c), for “Director General of Water Services” there is substituted “Water Services Regulation Authority”.
- (3) In section 204 (restriction on disclosure of information)—
- (a) in subsection (2)—
- (i) in paragraph (a), for “the Director General of Water Services” there is substituted “the Water Services Regulation Authority, the Consumer Council for Water”,
- (ii) in that paragraph, for “or regulations under section 2 of the Pollution Prevention and Control Act 1999” there is substituted “, regulations

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- under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003 ”,
- (iii) in paragraph (b), for “or the Water Act 1989” there is substituted “ , the Water Act 1989 or the Water Act 2003 ”,
- (iv) in paragraph (c), for “of any arrangements made by the Director General of Water Services under section 29(6)” there is substituted “ of any duty imposed by section 27H ”,
- (v) in paragraph (j)—
- (a) after “the Water Act 1989” there is inserted “ , the Water Act 2003 ”,
- (b) for “or that Act of 1989” there is substituted “ , the Water Act 1989 or the Water Act 2003 ”,
- (b) in subsection (3), in paragraph (a)—
- (i) for sub-paragraph (ii) there is substituted—
- “(ii) the Water Services Regulation Authority;”,
- (ii) for sub-paragraph (iii) there is substituted—
- “(iii) the Consumer Council for Water (or any regional committee of that Council established under section 27A of the Water Industry Act 1991); or”,
- (iii) for “or regulations under section 2 of the Pollution Prevention and Control Act 1999” there is substituted “ , regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003 ”.
- (4) In section 219 (powers to make regulations), in each of paragraphs (a) and (b) of subsection (2), for “the Director” there is substituted “ the Water Services Regulation Authority ”.

#### Commencement Information

- I32** Sch. 7 para. 28(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- I33** Sch. 7 para. 28(3)(a)(ii)(iii)(v)(b)(iii) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

VALID FROM 01/10/2005

#### *Water Consolidation (Consequential Provisions) Act 1991 (c. 60)*

- 29 (1) The Water Consolidation (Consequential Provisions) Act 1991 is amended as follows.
- (2) In Schedule 1 (amendment of enactments), paragraphs 10, 28(a) and 29(a) are omitted.
- (3) In Schedule 2 (transitional and transitory provisions and savings)—
- (a) in paragraph 8, for “Director General of Water Services” there is substituted “ Water Services Regulation Authority ”,

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(b) in paragraph 10, for “Director General of Water Services” there is substituted “ Water Services Regulation Authority ”.

*Competition and Service (Utilities) Act 1992 (c. 43)*

30 Section 50 of the Competition and Service (Utilities) Act 1992 (which amends section 2 of the WIA) shall cease to have effect.

**Commencement Information**

**I34** Sch. 7 para. 30 in force at 1.4.2005 by S.I. 2005/968, art. 2(m)(i)

*Coal Industry Act 1994 (c. 21)*

31 In section 59 (information to be kept confidential by the Authority), in subsection (4), after paragraph (o) there is inserted—  
 “(p) the Water Act 2003.”

**Commencement Information**

**I35** Sch. 7 para. 31 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

*Competition Act 1998 (c. 41)*

32 (1) The Competition Act 1998 is amended as follows.

(2) In section 54 (regulators), in subsection (1), for paragraph (d) there is substituted—  
 “(d) the Water Services Regulation Authority;”.

(3) In Schedule 7 (the Competition Commission), in paragraph 2(1)(d), sub-paragraph (i) is omitted.

(4) In Schedule 10 (regulators), the following are omitted—  
 (a) paragraph 5(3),  
 (b) paragraph 13(2) and (3).

(5) In Schedule 13 (transitional provisions and savings), in paragraph 35(2)(e), for “Director General of Water Services” there is substituted “ Water Services Regulation Authority ”.

**Commencement Information**

**I36** Sch. 7 para. 32(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

**I37** Sch. 7 para. 32(1) in force at 1.10.2004 for specified purposes by S.I. 2004/2528, art. 2(t)(ii) (with Sch. para. 8)

**I38** Sch. 7 para. 32(1) in force at 1.4.2005 for specified purposes by S.I. 2005/968, art. 2(m)(ii)

**I39** Sch. 7 para. 32(3) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

**I40** Sch. 7 para. 32(4)(a) in force at 1.4.2005 by S.I. 2005/968, art. 2(m)(ii)

**I41** Sch. 7 para. 32(4)(b) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

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**I42** Sch. 7 para. 32(4)(b) in force at 1.10.2004 in so far as not already in force by S.I. 2004/2528, art. 2(t)(ii) (with Sch. para. 8)

*Postal Services Act 2000 (c. 26)*

- 33 In Schedule 7 to the Postal Services Act 2000 (disclosure of information), in paragraph 3—
- (a) in sub-paragraph (2), for paragraph (j) there is substituted—  
“(j) the Water Services Regulation Authority,”
  - (b) in sub-paragraph (3), after paragraph (gh) there is inserted—  
“(gi) the Water Act 2003.”

**Commencement Information**

**I43** Sch. 7 para. 33(b) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

*Utilities Act 2000 (c. 27)*

- 34 In section 105 of the Utilities Act 2000 (general restrictions on disclosure of information)—
- (a) in subsection (5), for paragraph (e) there is substituted—  
“(e) the Water Services Regulation Authority;”
  - (b) in subsection (6)(l), at the end there is inserted “ or the Water Act 2003 ”.

**Commencement Information**

**I44** Sch. 7 para. 34(b) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

*Transport Act 2000 (c. 38)*

- 35 In Schedule 9 to the Transport Act 2000 (air traffic: information), in paragraph 3—
- (a) in sub-paragraph (2), for paragraph (g) there is substituted—  
“(g) the Water Services Regulation Authority;”
  - (b) in sub-paragraph (3), after paragraph (ra) there is inserted—  
“(rb) the Water Act 2003;”.

**Commencement Information**

**I45** Sch. 7 para. 35(b) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

*Enterprise Act 2002 (c. 40)*

- 36 (1) The Enterprise Act 2002 is amended as follows.
- (2) In section 136 (investigations and reports on market investigation references), in each of subsections (7)(c) and (8), for “the Director General of Water Services” there is substituted “ the Water Services Regulation Authority ”.
  - (3) In section 168 (regulated markets)—

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- (a) in subsection (4)(f), for “the Director General of Water Services” there is substituted “ the Water Services Regulation Authority ”,
  - (b) in subsection (5), for paragraph (e) there is substituted—  
 “(e) the Water Services Regulation Authority;”.
- (4) In Schedule 15 (enactments conferring functions in relation to which a public authority may disclose information), at the end there is inserted the following entry — “ Water Act 2003 (c. 37). ”

**Commencement Information**

- I46** Sch. 7 para. 36(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- I47** Sch. 7 para. 36(4) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

**PART 3**

MISCELLANEOUS

*Metropolis Water Act 1852 (c. 84)*

- 37 Section 1 of the Metropolis Water Act 1852 (restriction on sources of supply of water to London) shall cease to have effect.

**Commencement Information**

- I48** Sch. 7 para. 37 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

*Reservoirs Act 1975 (c. 23)*

- 38 In Schedule 1 to the Reservoirs Act 1975 (index of general definitions), the entry for “Local authority” is omitted.

**Commencement Information**

- I49** Sch. 7 para. 38 in force at 1.10.2004 by S.I. 2004/2528, art. 2(t)(iii) (with Sch. para. 8)
- I50** Sch. 7 para. 38 in force at 11.11.2004 for W. by S.I. 2004/2916, art. 2(f)

VALID FROM 01/04/2007

*Water Industry Act 1991 (c. 56)*

- 39 (1) The WIA is amended as follows.
- (2) In section 111 (restrictions on use of public sewers)—
- (a) in paragraph (b) of subsection (1), for “one hundred and ten degrees Fahrenheit” there is substituted “ forty-three degrees Celsius ”,

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(b) in subsection (5), for “seventy-three degrees Fahrenheit” there is substituted “twenty-three degrees Celsius”.

(3) In section 213(1) (powers to make regulations), after “or 17D(8)” (which is inserted by paragraph 49(2) of Schedule 8) there is inserted “or 105A”.

*Land Drainage Act 1991 (c. 59)*

- 40 (1) The Land Drainage Act 1991 is amended as follows.
- (2) In section 16 (which provides for the exercise of certain local authority powers by the Environment Agency), in subsection (2), for “under subsection (3) above” there is substituted “in exercising those powers”.
- (3) In section 55 (powers of internal drainage boards to borrow), in subsection (1)(a), for “in the execution of this Act” there is substituted “in the exercise or performance of any power or duty under this Act or the Water Resources Act 1991”.

**Commencement Information**

**I51** Sch. 7 para. 40 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

VALID FROM 01/08/2008

*Health Authorities Act 1995 (c. 17)*

- 41 In Schedule 1 to the Health Authorities Act 1995 (amendment of enactments), paragraph 120 is omitted.

*Environment Act 1995 (c. 25)*

- 42 In section 101 of the Environment Act 1995 (grants in connection with drainage works), subsection (1) is omitted.

**Commencement Information**

**I52** Sch. 7 para. 42 in force at 17.3.2004 for E. by S.I. 2004/641, art. 2(c) (with Sch. 3 para. 7)

**I53** Sch. 7 para. 42 in force at 1.4.2004 for W. by S.I. 2004/910, art. 2(1)(c)

## SCHEDULE 8

Section 101(1)

## MINOR AND CONSEQUENTIAL AMENDMENTS: LICENSING OF WATER SUPPLIERS ETC

*Water Act 1989 (c. 15)*

- 1 (1) Section 174 of the Water Act 1989 (general restrictions on disclosure of information) is amended as follows.

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- (2) In paragraph (b) of subsection (2), for “or a sewerage undertaker” there is substituted “, sewerage undertaker or company holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991”.
- (3) In paragraph (c) of that subsection, for “203(1) or (2)” there is substituted “ 203(1), (1A), (2) or (2A)”.
- (4) In subsection (6)(a), after “sewerage undertaker” there is inserted “, or with the carrying on by a company holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 of activities under its licence,”.

**Commencement Information**

- I54** Sch. 8 para. 1(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- I55** Sch. 8 para. 1(4) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

*Water Industry Act 1991 (c. 56)*

- 2 The WIA is amended as follows.

**Commencement Information**

- I56** Sch. 8 para. 2 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- I57** Sch. 8 para. 2 in force at 1.10.2004 for specified purposes by S.I. 2004/2528, art. 2(t)(iv)(v) (with Sch. para. 8)

VALID FROM 01/12/2005

- 3 In section 6 (appointment of relevant undertakers), after subsection (5) there is inserted—
- “(5A) A company shall not be appointed to be a relevant undertaker if it is a licensed water supplier.”

VALID FROM 01/12/2005

- 4 (1) Section 18 (orders for securing compliance) is amended as follows.
- (2) In subsection (1)—
- (a) after “this Part” there is inserted “ or a licence under Chapter 1A of this Part ”; and
  - (b) in paragraph (a), after “appointment” there is inserted “ or licence ”.
- (3) After that subsection there is inserted—
- “(1A) Subject to subsection (2) and sections 19 and 20 below, where—



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- (a) in the case of any company holding an appointment under Chapter 1 of this Part, the Secretary of State or the Authority is satisfied that the company—
- (i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding a licence under Chapter 1A of this Part; or
  - (ii) is likely to cause or contribute to any such contravention;
- or
- (b) in the case of any company holding a licence under Chapter 1A of this Part, the Secretary of State or the Authority is satisfied that the company—
- (i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding an appointment under Chapter 1 of this Part; or
  - (ii) is likely to cause or contribute to any such contravention,
- he or it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.”
- (4) In subsection (2)—
- (a) after “this Part” there is inserted “ or a licence under Chapter 1A of this Part ”; and
  - (b) in paragraph (a), after “subsection (1)” there is inserted “ or (1A) ”.
- (5) In subsection (4), after paragraph (a)(ii) there is inserted “or
- (iii) is causing or contributing to a contravention of any such condition or requirement; or
  - (iv) is likely to cause or contribute to any such contravention;”.
- (6) In subsection (6)—
- (a) in paragraph (a)—
    - (i) after “this Part” there is inserted “ or a licence under Chapter 1A of this Part ”; and
    - (ii) in sub-paragraph (i), after “appointment” there is inserted “ or licence ”; and
  - (b) in paragraph (b), after “this Part” there is inserted “ or of a licence under Chapter 1A of this Part ”.
- (7) For subsection (8) there is substituted—
- “(8) Where any act or omission—
- (a) constitutes a contravention of a condition of an appointment under Chapter 1 of this Part or of a condition of a licence under Chapter 1A of this Part or of a statutory or other requirement enforceable under this section; or
  - (b) causes or contributes to a contravention of any such condition or requirement,
- the only remedies for, or for causing or contributing to, that contravention (apart from those available by virtue of this section) shall be those for which



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express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting, or causing or contributing to, such a contravention.”

VALID FROM 01/12/2005

- 5 (1) Section 19 (exceptions to duty to enforce) is amended as follows.
- (2) In subsection (1), after paragraph (a) there is inserted—
- “(aa) that the extent to which the company caused or contributed to, or was likely to cause or contribute to, a contravention was trivial;”.
- (3) In subsection (3), after “paragraph (a),” there is inserted “ (aa), ”.

VALID FROM 01/12/2005

- 6 (1) Section 20 (procedure for enforcement orders) is amended as follows.
- (2) In subsection (1)—
- (a) after “final enforcement order” there is inserted “ under section 18(1) above ”; and
- (b) after “provisional enforcement order” there is inserted “ in a case in which section 18(4)(a)(i) or (ii) above applies ”.
- (3) After that subsection there is inserted—
- “(1A) Before making a final enforcement order under section 18(1A) above or confirming a provisional enforcement order in a case in which section 18(4)(a)(iii) or (iv) above applies, the Secretary of State or the Authority shall give notice—
- (a) stating that he or it proposes to make or confirm the order and setting out the effect of the order;
- (b) setting out—
- (i) the condition or requirement for the purposes of securing compliance with which the order is to be made or confirmed;
- (ii) the acts or omissions which, in his or its opinion, cause or contribute to or would cause or contribute to the contravention of that condition or requirement; and
- (iii) the other facts which, in his or its opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections to the proposed order or proposed confirmation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.”
- (4) In subsection (2), after “subsection (1)” there is inserted “ or (1A) ”.

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VALID FROM 01/12/2005

- 7 In section 22 (effect of enforcement order), in subsection (3), after “section 68(1)(a)” there is inserted “ or (1A)(a) ”.

VALID FROM 01/12/2005

- 8 (1) Section 23 (meaning and effect of special administration order) is amended as follows.
- (2) In subsection (1), after “this Part” there is inserted “ or which is a qualifying licensed water supplier ”.
- (3) In subsection (2), after “in relation to any company” there is inserted “ holding an appointment under Chapter 1 of this Part ”.
- (4) After that subsection, there is inserted—
- “(2A) The purposes of a special administration order made in relation to any company which is a qualifying licensed water supplier shall be—
- (a) the transfer to another company or companies, as a going concern, of so much of the company’s undertaking as it is necessary to transfer in order to ensure that activities relating to the introduction or introductions of water mentioned in subsection (6)(b) below may be properly carried on; and
- (b) the carrying on of those activities pending the making of the transfer.”
- (5) In subsection (4), for the words from “a company” to the end there is substituted—
- “(a) a company is replaced by another as a relevant undertaker without an appointment or variation under Chapter 1 of this Part; or
- (b) a company carries on activities relating to the introduction or introductions of water mentioned in subsection (6)(b) below formerly carried on by another company,
- in pursuance of a special administration order. ”
- (6) After subsection (5), there is inserted—
- “(6) For the purposes of this section, sections 24 to 26 below and Schedule 2 to this Act, a licensed water supplier is a qualifying licensed water supplier if—
- (a) it is the holder of a combined licence (within the meaning of Chapter 1A of this Part); and
- (b) the introduction of water by it which is permitted under section 66B or 66C below is designated as a strategic supply under section 66G below or the introductions of water by it which are so permitted are designated as a collective strategic supply under section 66H below.”

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VALID FROM 01/12/2005

- 9 (1) Section 24 (special administration orders made on special petitions) is amended as follows.
- (2) After subsection (1), there is inserted—
- “(1A) If on an application made to the High Court by petition presented—
- (a) by the Secretary of State (after consulting the Assembly); or
- (b) with the consent of the Secretary of State (after consulting the Assembly), the Authority,
- the Court is satisfied in relation to any company which is a qualifying licensed water supplier that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.”
- (3) In subsection (2)—
- (a) for “subsection (1)” there is substituted “ subsections (1) and (1A) ”,
- (b) in paragraphs (a) and (b), after “appointment” there is inserted “ or licence ”,
- (c) after paragraph (b) there is inserted—
- “(bb) in the case of a company which is a qualifying licensed water supplier, that—
- (i) action taken by the company has caused a contravention by a water undertaker of any principal duty; and
- (ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;”,
- (d) in paragraph (d), after “this Part” there is inserted “ or was not a qualifying licensed water supplier ”, and
- (e) in paragraph (e), at the beginning there is inserted “ in the case of a company holding an appointment under Chapter 1 of this Part, ”.
- (4) For subsection (7) there is substituted—
- “(7) In this section “principal duty” means—
- (a) in relation to a company holding an appointment under Chapter 1 of this Part, a requirement imposed on the company by section 37 or 94 below;
- (b) in relation to a company which is a qualifying licensed water supplier, any condition of its licence or any statutory requirement imposed on it in consequence of its licence.”

VALID FROM 01/12/2005

- 10 In section 25 (power to make special administration order on a winding up)—
- (a) after “this Part” there is inserted “ or is a qualifying licensed water supplier ”, and

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- (b) in paragraph (b), after “appointment” there is inserted “ or a qualifying licensed water supplier ”.

VALID FROM 01/12/2005

- 11 In section 26 (restrictions on voluntary winding up and insolvency proceedings), after “this Part” there is inserted “ or is a qualifying licensed water supplier ”.

VALID FROM 01/12/2005

- 12 (1) Section 27 (general duty of Authority to keep matters under review) is amended as follows.
- (2) In subsection (1), for the words from “water” to the end there is substituted—
- “(a) water undertakers or sewerage undertakers carry out functions; and
  - (b) licensed water suppliers carry on activities authorised by their licences.”
- (3) In subsection (2)—
- (a) after paragraph (a) there is inserted—
    - “(aa) the carrying on by companies holding licences under Chapter 1A of this Part of the activities authorised by their licences; or”, and
  - (b) in paragraph (b), for “such company” there is substituted “ company mentioned in paragraph (a) or (aa) above ”.
- (4) In subsection (4), at the end of paragraph (b) there is inserted “or
- (c) the activities authorised by retail licences or combined licences (within the meanings of Chapter 1A of this Part); or
  - (d) the carrying on of any such activities by a company holding any such licence.”

VALID FROM 01/12/2005

- 13 (1) Section 39A (information to be given to customers about overall performance) is amended as follows.
- (2) In subsection (1), after “customers” there is inserted “ , and, if the direction so specifies, licensed water suppliers using the undertaker’s supply system for the purpose of supplying water to the premises of customers or those customers, ”.
- (3) After subsection (2) there is inserted—
- “(2A) The licensed water suppliers referred to in subsection (1) above shall, if the Authority so directs, pass on the information about the matters mentioned in that subsection to their customers.
  - (2B) In subsection (1) above, the reference to the water undertaker’s supply system shall be construed in accordance with section 17B(5) above.”

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(4) In subsection (3), after “undertaker” there is inserted “ or licensed water supplier ”.

VALID FROM 01/12/2005

- 14 (1) Section 43 (calculation of payments to undertaker in respect of provision of water main) is amended as follows.
- (2) In subsection (1), for “water charges payable for the use during that year of that main are” there is substituted “ relevant revenue in respect of that main for that year is ”.
- (3) For subsection (7) there is substituted—
- “(7) Any reference in this section to the relevant revenue in respect of a main provided by a water undertaker for any year is—
- (a) in relation to premises connected with the main which are supplied with water by the undertaker, is a reference to so much of the aggregate of any charges payable to the undertaker in respect of services provided in the course of that year as represents charges which—
- (i) have been imposed by the undertaker in relation to those premises; and
- (ii) are reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main;
- (b) in relation to premises connected with the main which are supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges made during the course of that year which—
- (i) are payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b) (ii) below; and
- (ii) are reasonably attributable to the use of that main for the purpose of the supplier supplying water to those premises.”

VALID FROM 01/12/2005

- 15 (1) Section 52 (the domestic supply duty) is amended as follows.
- (2) In subsection (3), at the beginning there is inserted “ Subject to subsection (4A) below, ”.
- (3) After subsection (4) there is inserted—
- “(4A) This section does not apply to any premises if—
- (a) they are not in the area of the water undertaker;
- (b) they are not household premises (as defined in section 17C above);
- and

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- (c) the total quantity of water estimated to be supplied to them annually for the purposes of subsection (2) of section 17D above is not less than the quantity specified in that subsection.”

(4) After subsection (6) there is inserted—

“(6A) For the purposes of this section, there is also an interruption of the domestic supply duty owed by a water undertaker in relation to any premises where—

- (a) a notice is served in respect of those premises under section 63AA below; and
- (b) the time specified in that notice has passed.”

VALID FROM 01/12/2005

16 (1) Section 55 (supplies for non-domestic purposes) is amended as follows.

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

“(1A) This section also applies where—

- (a) a water undertaker is requested to provide a supply of water to premises which are not in the undertaker’s area by the owner or occupier of the premises;
- (b) the premises are household premises (as defined in section 17C above) or the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection; and
- (c) paragraph (a) or (b) of subsection (1) above applies.”

(3) In subsection (8), after “63” there is inserted “ and 63AB ”.

VALID FROM 01/12/2005

17 After section 63 there is inserted—

*“Supply by licensed water supplier etc*

**63AA Supply by licensed water supplier: domestic supply**

- (1) The owner or occupier of any premises may serve a notice on a water undertaker—
  - (a) informing the undertaker that the premises are to be supplied by a licensed water supplier; and
  - (b) specifying the time after which a supply of water to the premises by the undertaker will no longer be required.
- (2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.

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- (3) In this section and section 63AB below, any reference to two working days is a reference to a period of forty-eight hours calculated after disregarding any time falling on—
- (a) a Saturday or Sunday; or
  - (b) Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

#### **63AB Supply by licensed water supplier: non-domestic supply**

- (1) The duty of a water undertaker under section 55 above to provide a supply of water to any premises shall cease to apply if—
  - (a) a notice specifying the time after which a supply of water to the premises by the undertaker will no longer be required in consequence of the premises being supplied by a licensed water supplier has been served on the undertaker by the owner or occupier of the premises; and
  - (b) that time has passed.
- (2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.

#### **63AC Interim duty of water undertaker: domestic and non-domestic supply**

- (1) This section applies where—
  - (a) a licensed water supplier ceases to supply any premises with water; and
  - (b) the owner or occupier of the premises has not notified the water undertaker in whose area the premises are that—
    - (i) he has made arrangements for the continuation of the supply of water to the premises; or
    - (ii) he intends any supply of water to the premises to cease.
- (2) Where this section applies, it shall be the duty of the water undertaker to continue the supply of water to the premises which was made by the licensed water supplier.
- (3) Where a supply is made under subsection (2)—
  - (a) the charges payable in respect of the supply shall be fixed from time to time by a charges scheme under section 143 below; and
  - (b) subject to subsection (8) below, the supply shall be made until—
    - (i) a supply is made under section 52 or 55 above; or
    - (ii) a notice is served by the undertaker on the owner or occupier of the premises stating that the supply is to be discontinued (subject to subsection (4) below),
 whichever is earlier.



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- (4) A notice under subsection (3)(b)(ii) above may not be served before the end of the period of three months beginning with the day on which the supply by the supplier ceased.
- (5) A water undertaker shall not be required by virtue of this section to provide a supply of water to any premises if the provision of the supply would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The supply of water to any premises by a water undertaker under this section shall not prevent a proposed supply to those premises by that undertaker under section 55 above from being regarded as a new supply for the purposes of that section.
- (7) Where a duty is imposed by this section in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage shall be actionable at the suit of that owner or occupier; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.
- (8) Sections 60 to 63 above apply as they apply where a supply of water is made under section 52 or 55 above.”

VALID FROM 01/12/2005

- 18 (1) Section 68 (water quality) is amended as follows.
- (2) In subsection (1)—
- (a) after “water undertaker” there is inserted “ where its supply system is used for the purpose of supplying water to any premises for domestic or food production purposes ”,
  - (b) in paragraph (a), for the words from the beginning to “which” there is substituted “ to ensure that any water so supplied ”,
  - (c) in paragraph (b), for the words from “that undertaker” to “purposes” there is substituted “ water is so supplied ”, and
  - (d) after that paragraph, there is inserted— “ and this section and section 69 below apply, in relation to the duty of an undertaker, whether or not the water supplied using the undertaker’s supply system is supplied by the undertaker. ”
- (3) After that subsection, there is inserted—
- “(1A) It shall be the duty of a licensed water supplier—



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- (a) when supplying water to any premises for domestic or food production purposes, in accordance with its retail authorisation, to ensure that the water is wholesome at the time of supply; and
  - (b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which that supplier supplies water to premises for domestic or food production purposes, in accordance with its retail authorisation, that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources,
- and references in this subsection to the retail authorisation shall be construed in accordance with section 17A(2) above.”
- (4) In subsection (2), for “water supplied by a water undertaker” there is substituted “where a water undertaker’s supply system is used for the purpose of supplying water to any premises, any water so supplied”.
- (5) In subsection (3)—
- (a) for the words from “this section” to “premises” there is substituted “subsection (1) above where a water undertaker’s supply system is used for the purpose of supplying water to any premises, and the water so supplied”; and
  - (b) in paragraph (b), for “supplying the water, to take such steps” there is substituted “the water is supplied, to ensure that such steps are taken”.
- (6) After that subsection there is inserted—
- “(3A) For the purposes of subsection (1A) above where water supplied by a licensed water supplier to any premises would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—
- (a) it has ceased to be wholesome after leaving the relevant pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and
  - (b) it has so ceased in consequence of the failure of the supplier, before supplying the water, to ensure that such steps are taken as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the relevant pipes.
- “(3B) In subsection (3A) above “relevant pipes” means the pipes of the water undertaker whose supply system is used for the purpose of the supply made by the licensed water supplier.”
- (7) In subsection (5), after “undertaker” there is inserted “and licensed water supplier”.
- (8) In the sidenote (and the italic heading immediately preceding it), after “undertakers” there is inserted “and licensed water suppliers”.

- 19 (1) Section 69 (regulations for preserving water quality) is amended as follows.
- (2) In subsection (1), for “to take all such steps” there is substituted “or a licensed water supplier to ensure that such steps are taken”.
- (3) In subsection (2)—

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- (a) after “water undertaker” there is inserted “ or licensed water supplier ”,
  - (b) in paragraph (a)—
    - (i) for “take all such steps” there is substituted “ ensure that all such steps are taken ”; and
    - (ii) for “which that undertaker supplies” there is substituted “ used for relevant supplies ”,
  - (c) in paragraph (b)—
    - (i) for “take all such steps” there is substituted “ ensure that all such steps are taken ”; and
    - (ii) for “that undertaker uses or is proposing to use for supplying water” there is substituted “ is used or is proposed to be used for making relevant supplies ”,
  - (d) in paragraph (c), for “that undertaker is using or proposing to use for supplying water” there is substituted “ is used or proposed to be used for making relevant supplies ”,
  - (e) in paragraph (d)—
    - (i) for “keep records” there is substituted “ ensure that records are kept ”;
    - (ii) for “supplied with water” there is substituted “ receiving relevant supplies ”; and
    - (iii) the words “by that undertaker” are omitted, and
  - (f) in paragraph (e), for “comply with prescribed requirements” there is substituted “ ensure that prescribed requirements are complied with ”.
- (4) In subsection (3), for the words from “with respect” to “functions” there is substituted “ imposing obligations on water undertakers or licensed water suppliers with respect to the use for the purposes of or in connection with making relevant supplies ”.
- (5) In subsection (4)—
- (a) in paragraph (a)—
    - (i) for “forbid the use by water undertakers of” there is substituted “ require water undertakers or licensed water suppliers to ensure that ”, and
    - (ii) at the end there is inserted “ are not used for the purposes of or in connection with relevant supplies ”,
  - (b) in paragraph (b)—
    - (i) after “require” there is inserted “ water undertakers and licensed water suppliers to ensure that ”, and
    - (ii) for “by water undertakers to” there is substituted “ for the purposes of or in connection with relevant supplies ”, and
  - (c) in paragraph (c), for “by water undertakers” there is substituted “ for the purposes of or in connection with relevant supplies ”.
- (6) In subsection (5)—
- (a) the words “require a water undertaker” are omitted,
  - (b) in paragraph (a)—
    - (i) at the beginning, there is inserted “ require a water undertaker ”, and
    - (ii) for “by that undertaker” there is substituted “ using that undertaker’s supply system ”,
  - (c) the word “and” at the end of paragraph (a) is omitted,

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- (d) after that paragraph, there is inserted—
  - “(aa) require a licensed water supplier to publish information about the quality of water supplied for domestic or food production purposes to any premises by that supplier”, and
- (e) in paragraph (b)—
  - (i) at the beginning, there is inserted “ require any such undertaker or supplier ”, and
  - (ii) for “so supplied” there is substituted “ supplied as referred to in paragraph (a) or (aa) above (as the case may be) ”.
- (7) In subsection (6)—
  - (a) in paragraph (b)—
    - (i) after “water undertaker”there is inserted “ or licensed water supplier ”, and
    - (ii) after “the undertaker” there is inserted “ or supplier ”, and
  - (b) in paragraph (c), after “undertaker” there is inserted “ or licensed water supplier ”.
- (8) After that subsection there is inserted—
  - “(7) In this section, “relevant supplies” means—
    - (a) in the case of an obligation imposed on a water undertaker, supplies of water—
      - (i) made by the undertaker in carrying out its functions; or
      - (ii) made by a licensed water supplier using the undertaker’s supply system; and
    - (b) in the case of an obligation imposed on a licensed water supplier, supplies of water made by that supplier using a water undertaker’s supply system.”

**Commencement Information**

**I58** Sch. 8 para. 19 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

- 20 (1) Section 70 (offence of supplying water unfit for human consumption) is amended as follows.
- (2) In subsection (1)—
  - (a) for the words from “water undertaker” to “pipes” there is substituted “ water undertaker’s supply system is used for the purposes of supplying water ”, and
  - (b) for “the undertaker” there is substituted “ the relevant persons ”.
- (3) After that subsection there is inserted—
  - “(1A) For the purposes of subsection (1) above, the relevant persons are—
    - (a) the water undertaker whose supply system is used for the purposes of supplying the water (in this section referred to as the “primary water undertaker”); and
    - (b) any employer of persons, or any self-employed person, who is concerned in the supply of the water.”
- (4) In subsection (3)—

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- (a) for “water undertaker” there is substituted “ relevant person ”,
- (b) for “that undertaker” there is substituted “ that person ”, and
- (c) in paragraph (b), for “its” there is substituted “ the primary water undertaker's ”.

(5) After that subsection there is inserted—

“(3A) For the purposes of paragraph (b) of subsection (3) above—

- (a) in the case of proceedings against a primary water undertaker, showing that the undertaker took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that the relevant arrangements were reasonable in all the circumstances; and
- (b) in the case of proceedings against any other relevant person, showing that the person took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that it took all reasonable steps and exercised all due diligence for securing that all aspects of the relevant arrangements for which it was responsible were properly carried out.

(3B) In subsection (3A) above, “relevant arrangements” means arrangements made by the primary water undertaker to ensure that all other relevant persons were required to take all reasonable steps and exercise all due diligence for securing that the water was fit for human consumption on leaving the undertaker’s pipes or was not used for human consumption.”

#### Commencement Information

**I59** Sch. 8 para. 20 in force at 1.10.2004 by S.I. 2004/2528, art. 2(t)(iv) (with Sch. para. 8)

VALID FROM 01/12/2005

- 21 In section 72 (contamination of water sources), in subsection (5), after paragraph (b) there is inserted “; and
- (c) any pipe or conduit of a licensed water supplier.”

VALID FROM 01/12/2005

- 22 In section 73 (offences of contaminating water etc), in subsection (1)—
- (a) in the opening words, after “undertaker” there is inserted “ or licensed water supplier ”, and
  - (b) in paragraph (b), after “undertaker” there is inserted “ or supplier ”.

- 23 In section 74 (regulations for preventing contamination etc), in subsection (1)—
- (a) in paragraph (b), after “undertaker” there is inserted “ or licensed water supplier ”,
  - (b) in paragraph (c), after “that undertaker” there is inserted “ or a licensed water supplier ”, and

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- (c) in paragraph (d), after “undertaker” there is inserted “ or licensed water supplier ”.

#### Commencement Information

**I60** Sch. 8 para. 23 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

VALID FROM 01/12/2005

- 24 (1) Section 75 (power to prevent damage etc) is amended as follows.
- (2) After subsection (1) there is inserted—
- “(1A) Without prejudice to any power conferred on water undertakers by regulations under section 74 above, where a water undertaker whose supply system is used for the purpose of a licensed water supplier making a supply of water to any premises has reason for believing—
- (a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the water undertaker;
  - (b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that pipe or main;
  - (c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the supplier to those premises is being or is likely to be contaminated before it is used; or
  - (d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,
- the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.”
- (3) After subsection (10) there is inserted—
- “(11) Where the power conferred by subsection (2) above on a water undertaker is exercisable by virtue of subsection (1A) above—
- (a) the references to the consumer in subsections (2) and (3), in relation to a supply of water to any premises, shall be taken to be references to the person in respect of whom the supply is made; and
  - (b) the undertaker shall serve on the licensed water supplier providing the supply a copy of any notice under this section which is served on the person mentioned in paragraph (a) above.
- (12) In subsection (1A) above, the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.”

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VALID FROM 01/12/2005

- 25 In section 76 (temporary hosepipe bans), in subsection (1), after “supplied by that undertaker” there is inserted “ or a licensed water supplier ”.

VALID FROM 01/12/2005

- 26 (1) Section 78 (local authority functions in relation to undertaker’s supplies) is amended as follows.
- (2) In subsection (1)(a), after “undertaker” there is inserted “ , or by a licensed water supplier using that undertaker’s supply system, ”.
- (3) After subsection (2), there is inserted—
- “(3) In subsection (1)(a) above, the reference to the water undertaker’s supply system shall be construed in accordance with section 17B(5) above.”

VALID FROM 01/12/2005

- 27 (1) Section 86 (enforcement of water quality) is amended as follows.
- (2) In subsection (1)(b), for “by a water undertaker” there is substituted “ using a water undertaker’s supply system ”.
- (3) In subsection (2)(a)(i), for the words from “by” to “above” there is substituted “ or a licensed water supplier by or under any of sections 68, 69 and 79 above or imposed on a relevant person (as defined in subsection (1A) of section 70 above) by or under that section ”.
- (4) In subsection (3), after “undertaker” there is inserted “ , licensed water supplier or other relevant person (as defined in section 70(1A) above) ”.
- (5) In subsection (4), for paragraph (c) there is substituted—
- “(c) at any reasonable time require—
- (i) any water undertaker or licensed water supplier to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that undertaker or supplier by or under any of sections 68, 69 and 79 above; or
- (ii) any relevant person (as defined in subsection (1A) of section 70 above) to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that person by or under that section.”
- (6) In subsection (6), after “undertaker” there is inserted “ , licensed water supplier or other relevant person ”.

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VALID FROM 01/12/2005

- 28 In section 93(1) (interpretation of Part 3), in the definition of “private supply”, after “undertaker” there is inserted “ or by a licensed water supplier in accordance with Chapter 1A of Part 2 of this Act ”.

VALID FROM 01/12/2005

- 29 In section 93A (duty to promote the efficient use of water), in the following provisions—
- (a) subsection (1),
  - (b) subsection (2), and
  - (c) subsection (3),
- after “undertaker” there is inserted “ or licensed water supplier ”.

VALID FROM 01/12/2005

- 30 (1) Section 93B (power to impose requirements in connection with section 93A) is amended as follows.
- (2) In subsection (1), after “undertaker” there is inserted “ or licensed water supplier ”.
- (3) In subsection (2)—
- (a) after “water undertaker” there is inserted “ or licensed water supplier ”, and
  - (b) after “the undertaker”, in both places where it appears, there is inserted “ or supplier ”.
- (4) In subsection (3), in paragraphs (a) and (b), after “undertaker” there is inserted “ or licensed water supplier ”.
- (5) In subsection (4)—
- (a) after “water undertaker” there is inserted “ or licensed water supplier ”, and
  - (b) after “that undertaker” there is inserted “ or supplier ”.
- (6) In subsection (5)—
- (a) after “water undertaker” there is inserted “ or licensed water supplier ”, and
  - (b) after “that undertaker” there is inserted “ or supplier ”.
- (7) In subsection (6)—
- (a) after “water undertaker” there is inserted “ or licensed water supplier ”, and
  - (b) after “that undertaker” there is inserted “ or supplier ”.

VALID FROM 01/12/2005

- 31 (1) Section 93C (publicity) is amended as follows.
- (2) In subsection (1)—
- (a) after “water undertaker” there is inserted “ or licensed water supplier ”, and
  - (b) after “that undertaker's” there is inserted “ or supplier's ”.

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(3) In subsection (2), in paragraph (b), after “undertaker” there is inserted “ or supplier ”.

VALID FROM 01/12/2005

- 32 (1) Section 93D (information as to compliance) is amended as follows.
- (2) In subsection (1)—
- (a) after “water undertaker” there is inserted “ or licensed water supplier ”,
  - (b) after “that undertaker” there is inserted “ or supplier ”, and
  - (c) after “the undertaker” there is inserted “ or supplier ”.
- (3) In subsection (2), in paragraph (b), after “undertaker” there is inserted “ or supplier ”.
- (4) In subsection (3)—
- (a) after “water undertaker” there is inserted “ or licensed water supplier ”,
  - (b) after “the undertaker's” there is inserted “ or supplier's ”, and
  - (c) after “the undertaker” there is inserted “ or supplier ”.
- (5) In subsection (4), after “water undertaker” there is inserted “ or licensed water supplier ”.

VALID FROM 01/12/2005

- 33 In section 148 (restriction on charging for metering works), in subsection (2), after paragraph (c) there is inserted—
- “(cc) any sums which it is entitled to recover under an agreement under section 66D above;”.

VALID FROM 01/12/2005

- 34 In section 150 (fixing maximum charges for services provided with the help of undertakers' services), after subsection (1) there is inserted—
- “(1A) This section does not apply to water supplies provided by a licensed water supplier to premises of customers in accordance with Chapter 1A of Part 2 of this Act.”

VALID FROM 01/12/2005

- 35 In section 152 (grants for national security purposes), in subsection (1), after “relevant undertakers” there is inserted “ and licensed water suppliers ”.



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VALID FROM 01/12/2005

- 36 In section 158 (powers to lay pipes in streets), in subsection (7)(a), after “trunk main” there is inserted “ but not including a pipe laid in pursuance of section 66B(3)(a)(ii) above which is used for the purpose of supplying water other than for domestic or food production purposes or laid in pursuance of section 66B(3)(a)(iii) above ”.

VALID FROM 01/12/2005

- 37 (1) Section 162 (works in connection with metering) is amended as follows.
- (2) In subsection (1A), in paragraph (a) at the end there is inserted “ or ”.
- (3) In that subsection, after paragraph (c) there is inserted “or
- (d) a licensed water supplier supplies water to those premises using the undertaker’s supply system.”
- (4) After that subsection there is inserted—
- “(1B) In subsection (1A)(d) above, the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.”

VALID FROM 01/12/2005

- 38 In section 163 (power to fit stopcocks), in subsection (1), after “by the undertaker” there is inserted “ or a licensed water supplier ”.

VALID FROM 01/12/2005

- 39 (1) Section 174 (offences of interference with works) is amended as follows.
- (2) After subsection (1) there is inserted—
- “(1A) Subject to subsection (2) below, if any person without the consent of the licensed water supplier—
- (a) intentionally or recklessly interferes with any pipe or any structure, installation or apparatus which—
- (i) is vested in any licensed water supplier (in the case of a pipe) or belongs to any such supplier (in any other case); and
- (ii) is used in connection with the carrying on by the supplier of the activities authorised by its licence; or
- (b) by any act or omission negligently interferes with any such pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,
- that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.”
- (3) In subsection (2)—

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- (a) after “subsection (1)” there is inserted “ or (1A) ”, and
- (b) in paragraph (b)—
  - (i) after “water undertaker” there is inserted “ or licensed water supplier ”, and
  - (ii) in sub-paragraph (ii), for the words from “the stopcock was” to the end there is substituted “ subsection (2A) below applies ”.

(4) After that subsection there is inserted—

“(2A) This subsection applies—

- (a) in the case of a stopcock belonging to a water undertaker, if the stopcock was closed otherwise than by the undertaker;
- (b) in the case of a stopcock belonging to a licensed water supplier—
  - (i) if the stopcock was closed otherwise than by the supplier;
  - or
  - (ii) if the stopcock was closed by the supplier and the person in question for the purposes of subsection (2) above is the water undertaker whose supply system is used for the purpose of the supply made by the supplier,

and in this subsection the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.”

(5) In subsection (3), in paragraph (c), for “section” there is substituted “ subsection ”.

(6) After that subsection there is inserted—

“(3A) Any person who, without the consent of the licensed water supplier—

- (a) attaches any pipe or apparatus to any pipe which is—
  - (i) vested in a licensed water supplier; and
  - (ii) used in connection with the carrying on by the supplier of the activities authorised by its licence;
- (b) attaches any pipe or apparatus to any service pipe which does not belong to such a supplier or a water undertaker but which is a pipe by means of which water is supplied by such a supplier to any premises;
- (c) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or
- (d) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this subsection,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.”

(7) In subsection (4)—

- (a) after “subsection (3) above” there is inserted “ or paragraph (d) of subsection (3A) above ”, and
- (b) for “that subsection” there is substituted “ subsection (3) or (3A) above (as the case may require) ”.

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

“(5A) If any person wilfully or negligently injures or suffers to be injured any water fitting which—

*Status: Point in time view as at 01/08/2005.*

*Changes to legislation: Water Act 2003 is up to date with all changes known to be in force on or before 05 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) belongs to a licensed water supplier; and
- (b) is used in connection with the carrying on by the supplier of the activities authorised by its licence,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.”

(9) After subsection (8) there is inserted—

“(8A) In this section “consumer”—

- (a) in relation to a supply of water provided by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;
- (b) in relation to a supply of water provided by a licensed water supplier to any premises, means a person who is for the time being the person on whom liability to pay charges to the supplier in respect of that supply of water would fall.”

(10) In subsection (9), for “ “consumer” and “water fitting” have the same meanings” there is substituted “ “water fitting” has the same meaning ”.

VALID FROM 01/12/2005

- 40 (1) Section 175 (offence of tampering with meter) is amended as follows.
- (2) In subsection (1)(a), after “undertaker” there is inserted “ or licensed water supplier ”.
- (3) In subsection (2), for the words from “consent” to the end there is substituted “ appropriate consent ”.
- (4) After that subsection there is inserted—
- “(3) In subsection (2) above, the “appropriate consent” means—
- (a) if the meter is used by one relevant undertaker, the consent of that undertaker;
  - (b) if the meter is used by one licensed water supplier, the consent of that supplier;
  - (c) if the meter is used by two or more of the following persons—
    - (i) a relevant undertaker;
    - (ii) a licensed water supplier,
 the consent of each of those persons.
- (4) In subsection (3) above, references to the consent of a relevant undertaker are references to consent under section 176 below.”

VALID FROM 01/12/2005

- 41 (1) Section 179 (vesting of works in undertaker) is amended as follows.

*Status: Point in time view as at 01/08/2005.**Changes to legislation: Water Act 2003 is up to date with all changes known to be in force on or before 05 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) In subsection (1), for the words from “subsection” to “vested” there is substituted “subsections (1A) and (3) below”.

(3) After that subsection there is inserted—

“(1A) Subsection (1) above is subject to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested; but no agreement may be made between a relevant undertaker and any other person for the vesting in that person of any pipe laid in pursuance of section 66B(3)(a)(ii) above or of subsection (2)(b)(i) of section 66C above by virtue of subsection (3) (b) of that section.”

VALID FROM 01/12/2005

42 (1) Section 195 (maintenance of register for the purposes of Part 2) is amended as follows.

(2) In subsection (2), after paragraph (a) there is inserted—

“(aa) every licence under Chapter 1A of Part 2 of this Act, every variation or revocation of any such licence and every modification of the conditions of any such licence;”.

(3) In that subsection, after paragraph (b) there is inserted—

“(bb) every direction, consent or determination given or made under any such licence by the Secretary of State, the Authority, the Assembly or the Environment Agency;

(bc) every determination made by the Authority under section 17E or 66D(1) above;”.

(4) In that subsection, after paragraph (f) (inserted by section 48(2)) there is inserted “and

(g) every designation made by the Authority under section 66G or 66H above.”

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

“(3AA) Before giving a direction under subsection (3) above which relates to a licensed water supplier, the Secretary of State shall consult the Assembly.”

43 (1) Section 201 (publication of information and advice) is amended as follows.

(2) In subsection (1), for the words from “relating to” to “as it may” there is substituted—

“(a) relating to any matter which is connected with the carrying out by a company holding an appointment under Chapter 1 of Part 2 of this Act of the functions of a relevant undertaker; or

(b) relating to any matter which is connected with the carrying on by a company holding a licence under Chapter 1A of that Part of the activities authorised by the licence,

as it may”.

*Status: Point in time view as at 01/08/2005.*

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- (3) In subsection (2), at the end there is inserted “ or a licence under Chapter 1A of that Part ”.

#### Commencement Information

**I61** Sch. 8 para. 43 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

- 44 (1) Section 202 (duty to furnish the Secretary of State with information) is amended as follows.
- (2) After subsection (1) there is inserted—
- “(1A) It shall be the duty of a company holding a licence under Chapter 1A of Part 2 of this Act to furnish the Secretary of State with all such information relating to any matter which—
- (a) is connected with, or with any proposals relating to, the carrying on by that company of the activities authorised by the licence; or
- (b) is material to the carrying out by the Secretary of State of any of his functions under this Act, any of the other consolidation Acts or the Water Act 1989,
- as the Secretary of State may reasonably require.”
- (3) In subsection (4), in paragraph (c), at the end there is inserted “ or licences under Chapter 1A of that Part ”.
- (4) In subsection (5), after “undertaker” there is inserted “ or licensed water supplier ”.

#### Commencement Information

**I62** Sch. 8 para. 44 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

VALID FROM 01/12/2005

- 45 (1) Section 203 (power to acquire information for enforcement purposes) is amended as follows.
- (2) In subsection (1), for the words from “that a company” to “section 18 above” there is substituted—
- “(a) in the case of a company which holds an appointment as a relevant undertaker, that the company—
- (i) may be contravening, or may have contravened, any condition of the appointment or any statutory or other requirement enforceable under section 18 above; or
- (ii) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding a licence under Chapter 1A of Part 2 of this Act of any condition of the licence or any statutory or other requirement enforceable under section 18 above; or
- (b) in the case of a company which holds a licence under that Chapter, that the company—

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- (i) may be contravening, or may have contravened, any condition of the licence or any statutory or other requirement enforceable under section 18 above; or
- (ii) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of any condition of the appointment or any statutory or other requirement enforceable under section 18 above.”.

(3) In subsection (7)—

- (a) after “this Act” there is inserted “ or of a licence under Chapter 1A of that Part ”, and
- (b) after “such an appointment” there is inserted “ or licence ”.

VALID FROM 01/12/2005

46 (1) Section 205 (exchange of metering information) is amended as follows.

(2) In subsection (1)—

- (a) in paragraph (a), for “relevant undertakers” there is substituted “ service providers ”,
- (b) in paragraphs (b) and (c), for “undertakers” there is substituted “ providers ”,
- (c) in paragraph (d), for “undertaker” there is substituted “ provider ”, and
- (d) in the closing words, for “undertaker”, in both places where it appears, there is substituted “ provider ”.

(3) In subsection (2)—

- (a) for “relevant undertaker” there is substituted “ service provider ”,
- (b) for “such undertaker” there is substituted “ such provider ”, and
- (c) for “the undertaker” there is substituted “ the provider ”.

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

“(3) The duties of a service provider under this section shall be enforceable under section 18 above by the Authority.

(4) For the purposes of this section, the following are service providers—

- (a) any relevant undertaker; and
- (b) any licensed water supplier.”

47 (1) Section 206 (restriction on disclosure of information) is amended as follows.

(2) In subsection (3), at the end of paragraph (b) there is inserted “ or by a licensed water supplier of any of the duties imposed on it by or under this Act ”.

(3) In that subsection, in paragraph (c), for “203(1) or (2)” there is substituted “ 203(1), (1A), (2) or (2A) ”.

(4) In subsection (5), in paragraph (a), after “undertaker” there is inserted “ , or with the carrying on by a licensed water supplier of activities under its licence, ”.

*Status: Point in time view as at 01/08/2005.*

*Changes to legislation: Water Act 2003 is up to date with all changes known to be in force on or before 05 September 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Commencement Information**

- I63** Sch. 8 para. 47(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), **Sch. 2** (with Sch. 3 para. 7)  
**I64** Sch. 8 para. 47(4) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), **Sch. 2** (with Sch. 3 para. 7)

- 48 (1) Section 208 (directions in the interests of national security) is amended as follows.
- (2) In subsections (1) and (2)—
- (a) after “relevant undertaker” there is inserted “ or licensed water supplier ”, and
- (b) after “that undertaker” there is inserted “ or supplier (as the case may be) ”.
- (3) In subsection (3), after “relevant undertaker”, in both places where it appears, there is inserted “ or licensed water supplier ”.

**Commencement Information**

- I65** Sch. 8 para. 48 in force at 1.4.2004 by S.I. 2004/641, art. 3(y), **Sch. 2** (with Sch. 3 para. 7)

- 49 (1) Section 213 (power to make regulations) is amended as follows.
- (2) In subsection (1), after “section 8(1) or (2)” there is inserted “ or 17D(8) ”.
- (3) In subsection (2)(a), after “sewerage undertaker” there is inserted “ or licensed water supplier ”.

**Commencement Information**

- I66** Sch. 8 para. 49(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), **Sch. 2** (with Sch. 3 para. 7)  
**I67** Sch. 8 para. 49(3) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), **Sch. 2** (with Sch. 3 para. 7)

- 50 (1) Section 219 (general interpretation) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a) of the definition of “customer or potential customer”, at the end there is inserted “ (other than a licensed water supplier) ”,
- (b) in the definition of “water main”—
- (i) after “water undertaker” there is inserted “ or licensed water supplier ”, and
- (ii) after “of the undertaker” there is inserted “ or supplier ”, and
- (c) in the appropriate place there is inserted—
- ““licensed water supplier” shall be construed in accordance with section 17B(9) above;”.
- (3) After subsection (4) there is inserted—
- “(4A) In this Act, unless otherwise stated, references to the supply system of a water undertaker are to the water mains and other pipes which it is the undertaker’s duty to develop and maintain by virtue of section 37 above.”



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- I68** Sch. 8 para. 50 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- I69** Sch. 8 para. 50(3) in force at 1.10.2004 for specified purposes by S.I. 2004/2528, art. 2(t)(v) (with Sch. para. 8)

VALID FROM 01/12/2005

- 51 (1) Schedule 2 (transitional provision on termination of appointments) is amended as follows.
- (2) In paragraph 1, in sub-paragraph (1), for “and (3)” there is substituted “to (3A)”.
- (3) In that paragraph, in paragraph (a) of sub-paragraph (3), after “company” there is inserted “holding an appointment under Chapter 1 of this Part”.
- (4) In that paragraph, after that sub-paragraph there is inserted—
- “(3A) The third case in which this Schedule applies is where—
- (a) the High Court has made a special administration order in relation to any company which is a qualifying licensed water supplier (“the transferor”); and
- (b) it is proposed that on and after the relevant date another company (“the transferee”) should carry on activities relating to the introduction or introductions of water mentioned in section 23(6)(b) of this Act which were carried on by the transferor until that date.”
- (5) In that paragraph, in sub-paragraph (4)—
- (a) in paragraph (b) of the definition of “the relevant date”, after “sub-paragraph (3)” there is inserted “or (3A)”, and
- (b) there are inserted in the appropriate places—
- ““other relevant companies” means any companies, other than the transferor and the transferee, which are likely on or at a time after the relevant date to be holding appointments as water undertakers for any area in which, or in part of which, the activities relating to the introduction or introductions of water mentioned in section 23(6)(b) of this Act will be carried on by the transferee;”
- ““transferor” and “transferee” shall be construed in accordance with sub-paragraph (3A) above;”.
- (6) In paragraph 2, after sub-paragraph (7) there is inserted—
- “(7A) In a case specified in paragraph 1(3A) above—
- (a) the preceding provisions of this paragraph shall have effect as if—
- (i) any reference to the existing appointee were a reference to the transferor;
- (ii) any reference to the new appointee were a reference to the transferee; and



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(iii) any reference to other appointees were a reference to other relevant companies; and

(b) sub-paragraph (6) above shall have effect as if the reference to functions were, in relation to a company which is a licensed water supplier, a reference to activities authorised by its licence and any statutory functions imposed on it in consequence of its licence.”

(7) In paragraph 3, after sub-paragraph (6) there is inserted—

“(7) In a case specified in paragraph 1(3A) above the preceding provisions of this paragraph shall have effect as if—

- (a) any reference to the existing appointee were a reference to the transferor;
- (b) any reference to the new appointee were a reference to the transferee; and
- (c) any reference to other appointees were a reference to other relevant companies.”

(8) After paragraph 4 there is inserted—

*“Exclusion of transfer of licence*

4A Where a scheme under this Schedule is made in the case specified in paragraph 1(3A) above, the scheme may not provide for the transfer to the transferee of the licence under Chapter 1A of Part 2 of this Act which is held by the transferor.”

(9) In paragraph 5, after sub-paragraph (2) there is inserted—

“(3) In a case specified in paragraph 1(3A) above—

- (a) sub-paragraph (2) above shall have effect as if—
  - (i) any reference to the existing appointee were a reference to the transferor;
  - (ii) any reference to the new appointee were a reference to the transferee; and
  - (iii) any reference to any other appointee or appointees were a reference to any other relevant company or companies; and
- (b) paragraph (g) of that sub-paragraph shall have effect as if the reference to two or more such appointees as are mentioned in paragraph (f) of that sub-paragraph were a reference to two or more such persons as are mentioned in that paragraph (as it has effect by virtue of paragraph (a) above).”

(10) In paragraph 6, after sub-paragraph (8) there is inserted—

“(9) In a case specified in paragraph 1(3A) above, the preceding provisions of this paragraph shall have effect as if—

- (a) any reference to the existing appointee were a reference to the transferor; and
- (b) any reference to the new appointee were a reference to the transferee.”

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VALID FROM 01/12/2005

- 52 (1) Schedule 3 (special administration orders) is amended as follows.
- (2) In paragraph 4—
- (a) in paragraph (a), at the end there is inserted “ or a licence under Chapter 1A of that Part ”, and
- (b) in paragraph (b), at the end there is inserted “ or licence ”.
- (3) In paragraph 10(2)—
- (a) after “1991” there is inserted “ or its licence under Chapter 1A of that Part ”, and
- (b) after “that appointment” there is inserted “ or licence ”.

*Water Resources Act 1991 (c. 57)*

- 53 (1) The WRA is amended as follows.
- (2) In section 203 (exchange of information with respect to pollution incidents etc)—
- (a) after subsection (1) there is inserted—
- “(1A) It shall be the duty of the Agency to provide a licensed water supplier with all such information to which this section applies as is in the possession of the Agency and is reasonably requested by the supplier for purposes connected with the carrying on of activities under its licence.”,
- (b) after subsection (2) there is inserted—
- “(2A) It shall be the duty of every licensed water supplier to provide the Agency with all such information to which this section applies as is in the possession of the supplier and is reasonably requested by the Agency for purposes connected with the carrying out of any of its functions.”,
- (c) for subsection (3) there is substituted—
- “(3) Information provided to a water undertaker, to a licensed water supplier or to the Agency under subsection (1), (1A), (2) or (2A) above shall be provided in such form and in such manner and at such times as the undertaker, the supplier or the Agency, as the case may be, may reasonably require.”,
- (d) in subsection (4)—
- (i) for “subsection (1) or (2)” there is inserted “ subsection (1), (1A), (2) or (2A) ”, and
- (ii) after “undertaker” there is inserted “, to a licensed water supplier”,
- (e) in subsection (5), for “a water undertaker under subsection (2) above shall” there is substituted—
- “(a) a water undertaker under subsection (2) above; or
- (b) a licensed water supplier under subsection (2A) above,
- shall ”, and
- (f) after subsection (7) there is inserted—

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“(8) Any reference in this section to a licensed water supplier is a reference to a company holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991.”

(3) In section 204 (restriction on disclosure of information)—

- (a) in paragraph (b) of subsection (2), for “or sewerage undertaker” there is substituted “, sewerage undertaker or company holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 ”,
- (b) in paragraph (c) of that subsection, for “203(1) or (2)” there is substituted “ 203(1), (1A), (2) or (2A) ”, and
- (c) in subsection (4)(a), after “sewerage undertaker” there is inserted “, or with the carrying on by a company holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 of activities under its licence, ”.

#### Commencement Information

**I70** Sch. 8 para. 53(1) in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

**I71** Sch. 8 para. 53(3)(c) in force at 1.4.2004 by S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)

VALID FROM 01/12/2005

#### *Competition Act 1998 (c. 41)*

54 In Schedule 7 to the Competition Act 1998, in paragraph 19A(9), in the definition of “special reference group”, in paragraph (g), for “or 14” there is substituted “, 14 or 17K ”.

VALID FROM 01/12/2005

#### *Enterprise Act 2002 (c. 40)*

55 (1) The Enterprise Act 2002 is amended as follows.

(2) In section 168 (regulated markets)—

- (a) after subsection (3)(f) there is inserted—
  - “(ff) modifying the conditions of a licence granted under Chapter 1A of Part 2 of the Act of 1991 or modifying the terms and conditions of an agreement under section 66D of that Act;”, and
- (b) after subsection (4)(f) there is inserted—
  - “(ff) in relation to a licence granted under Chapter 1A of Part 2 of the Act of 1991 or an agreement under section 66D of that Act, the duties of the Authority under section 2 of that Act or under that section and section 66D of that Act (as the case may be);”.

*Status: Point in time view as at 01/08/2005.*

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(3) In section 249 (special administration regimes), in subsection (1), after paragraph (a) there is inserted—

“(aa) a qualifying licensed water supplier within the meaning of subsection (6) of section 23 of the Water Industry Act 1991 (meaning and effect of special administration order).”

## SCHEDULE 9

Section 101(2)

### REPEALS AND REVOCATION

#### PART 1

##### ABSTRACTION AND IMPOUNDING

###### Commencement Information

**I72** Sch. 9 Pt. 1 in force at 1.4.2004 for specified purposes by [S.I. 2004/641](#), [art. 3\(z\)](#) (with [Sch. 3 para. 7](#))

**I73** Sch. 9 Pt. 1 in force at 1.4.2005 for specified purposes by [S.I. 2005/968](#), [art. 2\(n\)](#)

###### *Title and reference*

Water Resources Act 1991 (c. 57)

###### *Extent of repeal*

In section 21(9), the words from “and in that subsection” to the end.

In section 25(2), the words “, in circumstances not constituting such a contravention,”.

Section 28.

Section 29(3).

Sections 30 and 31.

Section 33.

Section 36.

Section 39(3).

In section 47, in subsection (1), the words “to abstract water”; and subsection (3).

Sections 49 and 50.

Section 52(8).

Section 223.

#### PART 2

##### NEW REGULATORY ARRANGEMENTS, ETC

###### Commencement Information

**I74** Sch. 9 Pt. 2 in force at 1.4.2004 for specified purposes by [S.I. 2004/641](#), [art. 3\(z\)](#) (with [Sch. 3 para. 7](#))

**I75** Sch. 9 Pt. 2 in force at 1.10.2004 for specified purposes by [S.I. 2004/2528](#), [art. 2\(u\)](#) (with [Sch. para. 8](#))

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**I76** Sch. 9 Pt. 2 in force at 1.4.2005 for specified purposes by [S.I. 2005/968](#), [art. 2\(n\)](#)

<i>Title and reference</i>	<i>Extent of repeal</i>
Water Industry Act 1991 (c. 56)	Section 1. Section 12(3)(b)(i), (4) and (5). Section 14(8) and (8A). Section 28. Section 30. In section 39, in each of subsections (1)(b) and (3)(b), the word “and” at the end of subparagraph (i). In section 96, in each of subsections (1)(b) and (3)(b), the word “and” at the end of subparagraph (i). Sections 193 and 194. In section 195(2), the word “and” at the end of paragraph (d). Schedule 1. Schedule 4.
Utilities Act 2000 (c. 27)	In section 104(1), the word “or” at the end of paragraph (a).

### PART 3

#### MISCELLANEOUS AND SUPPLEMENTARY

##### Commencement Information

- I77** Sch. 9 Pt. 3 in force at 17.3.2004 for specified purposes for E. by [S.I. 2004/641](#), [art. 2\(d\)](#) (with Sch. 3 para. 7)
- I78** Sch. 9 Pt. 3 in force at 1.4.2004 by [S.I. 2004/641](#), [art. 3\(z\)](#) (with Sch. 3 para. 7)
- I79** Sch. 9 Pt. 3 in force at 1.4.2004 for specified purposes for W. by [S.I. 2004/910](#), [art. 2\(1\)\(d\)](#)
- I80** Sch. 9 Pt. 3 in force at 28.5.2004 for specified purposes by [S.I. 2004/641](#), [art. 4\(d\)\(i\)](#) (with Sch. 3 para. 7)
- I81** Sch. 9 Pt. 3 in force at 1.10.2004 for specified purposes by [S.I. 2004/2528](#), [art. 2\(u\)](#) (with Sch. para. 8)
- I82** Sch. 9 Pt. 3 in force at 11.11.2004 for specified purposes for W. by [S.I. 2004/2916](#), [art. 2\(g\)](#)
- I83** Sch. 9 Pt. 3 in force at 1.4.2005 for specified purposes by [S.I. 2005/968](#), [art. 2\(n\)](#)

<i>Title and reference</i>	<i>Extent of repeal or revocation</i>
Metropolis Water Act 1852 (c. 84)	Section 1.
Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the entry relating to the Office of the Director General of Water Services.
Reservoirs Act 1975 (c. 23)	In section 22(1), the word “or” at the end of paragraph (a). In Schedule 1, the entry for “Local authority”.
House of Commons Disqualification Act 1975 (c. 24)	In Schedule 1, in Part 3, the entry relating to the Chairman of a customer service

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	committee maintained under section 28 of the Water Industry Act 1991, and the entry relating to the Director General of Water Services.
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Schedule 1, in Part 3, the entry relating to the Chairman of a customer service committee maintained under section 28 of the Water Industry Act 1991, and the entry relating to the Director General of Water Services.
Water Act 1989 (c. 15)	Section 185(2)(a). In Schedule 3, paragraphs 6 and 7. In Schedule 4, paragraph 6. In Schedule 25, paragraphs 68(2)(a) and 76(a).
Environmental Protection Act 1990 (c. 43)	Section 78A(5)(c).
Water Industry Act 1991 (c. 56)	In section 44(5), the words “for any locality”. In section 69, in subsection (2)(d), the words “by that undertaker”; and in subsection (5), the words “require a water undertaker”, and the word “and” at the end of paragraph (a). In section 86(1), the words “as technical assessors”. In section 98(5), the words “in a particular locality”. In section 101A(2), in paragraph (a), the words from “each of which” to the end of the paragraph; and in paragraph (c), the words “in respect of which the condition specified in paragraph (a) above is satisfied”. In section 102(1)(a), the word “or” at the end of paragraph (a). In section 103(1)(a), the word “or” at the end of paragraph (a). Section 104(6). Section 138(5). In section 219(1), the definition of “the Director”. Schedule 7.
Water Resources Act 1991 (c. 57)	Section 66(2)(a). In section 71(4), “33,”. Section 77(4). Section 79A(8). Section 125(2). Sections 147 to 149. In section 221(1), in paragraph (a)(ii) of the definition of “flood defence provisions”, the words “147 to 149,”. In Schedule 10, in paragraph 11, in each of sub-paragraphs (2) and (3), the words “,

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	subject to sub-paragraph (4) below,”; sub-paragraph (4); and in sub-paragraph (9), the words “(6) or”.
Water Consolidation (Consequential Provisions) Act 1991 (c. 60)	In Schedule 1, paragraphs 10, 28(a) and 29(a).
Competition and Service (Utilities) Act 1992 (c. 43)	Section 50.
Health Authorities Act 1995 (c. 17)	In Schedule 1, paragraph 120.
Environment Act 1995 (c. 25)	Section 101(1). In Schedule 4, in paragraph 1(1), the word “or” at the end of paragraph (a); and in paragraph 1(5), the word “and” at the end of paragraph (b). In Schedule 22, paragraph 181.
Competition Act 1998 (c. 41)	In Schedule 7, paragraph 2(1)(d)(i). In Schedule 10, paragraphs 5(3) and 13(2) and (3).
National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672)	In Schedule 1, in the entry relating to the WIA— (a) in the paragraph relating to functions under sections 2, 5 (etc), the references to section 2, sections 18 to 22, sections 68 to 70, section 93A and section 205, (b) the paragraph relating to section 28(4).

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