



Water Act 2014

2014 CHAPTER 21

PART 1

WATER INDUSTRY

CHAPTER 2

WATER AND SEWERAGE UNDERTAKERS

Arrangements between relevant undertakers

8 Bulk supply of water by water undertakers

- (1) For sections 40 and 40A of the Water Industry Act 1991 (agreements for the bulk supply of water etc) there is substituted—

“40 Bulk supplies

- (1) This section applies where—
- (a) a qualifying person requests a water undertaker to provide a supply of water in bulk to the qualifying person, or
 - (b) a water undertaker proposes such an arrangement;
- and references in this section to the supplier are references to the water undertaker who is to provide the supply of water.
- (2) In this section “qualifying person” means—
- (a) a water undertaker;
 - (b) a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the supplier, the Authority may—

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

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- (a) if it appears to the Authority that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the supplier should give a supply of water in bulk to the qualifying person, and
 - (b) if the Authority is satisfied that the supplier and qualifying person cannot reach agreement within a reasonable time,
- by order require the supplier to give and the qualifying person to take a supply of water in bulk for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency, in particular about whether the proposed supply of water would secure an efficient use of water resources, taking into account the effect on the environment of the proposed supply.
 - (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the supplier and the qualifying person.
 - (6) If the Authority makes an order under subsection (3) that affects a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
 - (a) the person becomes a water undertaker for the area specified in the order, or
 - (b) the person becomes a water undertaker for an area that includes the area specified in the order (in the case of a water undertaker applying for a variation).
 - (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the supply of water in bulk by a water undertaker to a qualifying person, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
 - (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement for the supply of water in bulk by a water undertaker to a qualifying person, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
 - (9) In exercising its functions under this section, the Authority must have regard to the desirability of—
 - (a) facilitating effective competition within the water supply industry;
 - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;

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- (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.
- (10) In this section and section 40A “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 40A(1) which would result in, or which would vary or terminate, a bulk supply agreement, means—
- (a) the Environment Agency, in a case where all parties to the bulk supply agreement are or would be—
 - (i) a water undertaker whose area is wholly in England, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (b) the NRBW, in a case where all parties to the bulk supply agreement are or would be—
 - (i) a water undertaker whose area is wholly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (c) both the Environment Agency and the NRBW, in any other case.
- (11) In this section and sections 40A to 40J “bulk supply agreement” means an agreement with one or more water undertakers for the supply of water in bulk and includes—
- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
 - (b) any agreement which has been varied by order under section 40A(1).

40A Variation and termination of bulk supply agreements

- (1) On the application of any party to a bulk supply agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, that the bulk supply agreement should be varied or terminated, and
 - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement within a reasonable time,
- by order vary or terminate the bulk supply agreement.
- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency, in particular about whether the proposed variation or termination of the bulk supply agreement would secure an efficient use of water resources, taking into account the effect on the environment of what is proposed.
- (3) If an order under subsection (1) is made in relation to a bulk supply agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect (as the case may be).

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- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a bulk supply agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (6) Subsection (5)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement to vary or terminate a bulk supply agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement in question and to the desirability of—
 - (a) facilitating effective competition within the water supply industry;
 - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.
- (8) In this section and sections 40B to 40J—

“qualifying person” has the meaning given by section 40;

“supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.

40B Codes in respect of bulk supply agreements

- (1) The Authority may issue one or more codes in respect of bulk supply agreements.
- (2) A code may make provision about—
 - (a) procedures in connection with making a bulk supply agreement;
 - (b) procedures in connection with varying or terminating a bulk supply agreement;
 - (c) procedures to be followed by the Authority in determining whether to make an order under section 40(3) or 40A(1);
 - (d) the terms and conditions of a bulk supply agreement, including terms as to the duration of such an agreement;

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- (e) principles for determining the terms and conditions that should or should not be incorporated into a bulk supply agreement;
 - (f) the steps to be taken by the Authority in determining whether a person is complying with a code.
- (3) A code must include provision requiring persons proposing to make, vary or terminate a bulk supply agreement to consult the appropriate agency.
 - (4) If the Authority considers that a water undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
 - (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
 - (6) It is the duty of a water undertaker to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
 - (7) A code may make different provision for different persons or different descriptions of person.
 - (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
 - (9) A revised code may include provision for applying any of its revisions to bulk supply agreements made before the revised code comes into force.
 - (10) In this section “the appropriate agency”, in relation to a bulk supply agreement or proposed bulk supply agreement, means the body that would be consulted by the Authority under section 40(4) or 40A(2) if an order under section 40(3) or 40A(1) were being considered in relation to the agreement or proposed agreement.

40C Codes under section 40B: procedure

- (1) Before issuing a code under section 40B, the Authority must—
 - (a) prepare a draft of the proposed code under section 40B;
 - (b) consult the appropriate agency;
 - (c) consult such other persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed code.
- (3) Before a code under section 40B prepared by the Authority is issued, the Minister may direct the Authority—
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In subsection (3) “the Minister” means—
 - (a) the Secretary of State, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—

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- (i) a water undertaker whose area is wholly or mainly in England, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to bulk supply agreements to which—
 - (i) a person falling within paragraph (a)(i) or (ii) is party, and
 - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such bulk supply agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such bulk supply agreements as are referred to in that paragraph on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code prepared by the Authority in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) In this section “the appropriate agency” means—
- (a) the Environment Agency, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(a)(i) or (ii);
 - (b) the NRBW, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(b)(i) or (ii);
 - (c) both the Environment Agency and the NRBW, in any other case.
- (10) This section is subject to section 40D.

40D Codes under section 40B: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 40B and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.

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- (2) Section 40C does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised code, and
 - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

40E Rules about charges for the supply of water in bulk

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a bulk supply agreement.
- (2) The rules may in particular make provision about—
 - (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a water undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—
 - (a) make different provision for different water undertakers or different descriptions of water undertaker;
 - (b) make different provision for different purposes;
 - (c) make provision subject to exceptions.
- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (7) The Authority must issue revised rules if—
 - (a) guidance is issued under section 40I, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.

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- (8) Revised rules may include provision for applying any of their revisions to bulk supply agreements made before the revised rules come into effect.

40F Rules under section 40E: provision about the reduction of charges

- (1) Rules under section 40E may provide for the reduction of charges payable for a supply of water under a bulk supply agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
- (a) specify conditions that affect any party to a bulk supply agreement;
 - (b) require that steps be taken for the purpose of reducing or managing water consumption;
 - (c) specify conditions about reducing charges payable by a person who—
 - (i) is not party to the agreement, and
 - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition falling within paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the water undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
- (a) make provision as to the content of the notice;
 - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
- (a) the provision of the rules that brings about the reduction in the charge;
 - (b) the amount of the charge, with and without the reduction;
 - (c) the period for which the reduction has effect.

40G Rules under section 40E: procedure

- (1) Before issuing rules under section 40E, the Authority must—
- (a) prepare a draft of the proposed rules, and
 - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 40I in making rules under section 40E.
- (4) Before rules under section 40E prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
- (a) the Secretary of State, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—

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- (i) a water undertaker whose area is wholly or mainly in England, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to bulk supply agreements to which—
 - (i) a person falling within paragraph (a)(i) or (ii) is party, and
 - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (7) This section is subject to section 40H.

40H Rules under section 40E: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 40E and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 40G does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and

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- (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 40G.

40I Rules under section 40E: guidance

- (1) The Minister may issue guidance as to the content of rules under section 40E.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
 - (a) the Secretary of State, in relation to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in England, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (b) the Welsh Ministers, in relation to bulk supply agreements to which all parties are—
 - (i) a water undertaker whose area is wholly or mainly in Wales, or
 - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
 - (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to bulk supply agreements to which—

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- (i) a person falling within paragraph (a)(i) or (ii) is party, and
- (ii) a person falling within paragraph (b)(i) or (ii) is party.

40J Duty to provide information about bulk supplies

- (1) A supplier under a bulk supply agreement must provide such information as the appropriate agency may request in relation to water supplied under the agreement.
 - (2) The requirement in subsection (1) is enforceable by the Authority under section 18.
 - (3) In subsection (1) “the appropriate agency” means the body that would be consulted by the Authority under section 40A(2) if the agreement were to be varied or terminated by an order under section 40A(1).”
- (2) In sections 40A to 40J of the Water Industry Act 1991 (as substituted by subsection (1))
- (a) a reference to a bulk supply agreement includes a reference to an old bulk supply agreement, and
 - (b) a reference to a supplier, in relation to a bulk supply agreement, is to be construed accordingly.

For these purposes, an old bulk supply agreement is a bulk supply agreement within the meaning of section 40A, as that section had effect before being substituted under subsection (1).

Commencement Information

- I1** S. 8(1) in force at 6.4.2015 for specified purposes by [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))
- I2** S. 8(1) in force at 1.11.2016 for specified purposes by [S.I. 2016/1007](#), [art. 2\(b\)](#)
- I3** S. 8(1)(2) in force at 1.4.2018 for specified purposes for E. by [S.I. 2018/397](#), [art. 2\(a\)](#)
- I4** S. 8(2) in force at 6.4.2015 for specified purposes by [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(ii\)](#) (with [art. 4](#))

9 Main connections into sewerage systems

- (1) For section 110A of the Water Industry Act 1991 (new connections with public sewers) there is substituted—

“110A Main connections

- (1) This section applies where—
 - (a) a qualifying person requests a sewerage undertaker to permit a main connection into the established undertaker's sewerage system for the benefit of the qualifying person, or
 - (b) a sewerage undertaker proposes such an arrangement;and references in this section to the established undertaker are references to the sewerage undertaker who is to permit the main connection.
- (2) In this section “qualifying person” means—
 - (a) a sewerage undertaker, or

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- (b) a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the established undertaker, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purposes of this Part that the established undertaker should permit a main connection into its sewerage system, and
 - (b) if the Authority is satisfied that the established undertaker and qualifying person cannot reach agreement,
- by order require the established undertaker to permit the connection for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency.
- (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the established undertaker and the qualifying person.
- (6) If the Authority makes an order under subsection (3) on the application of a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
- (a) the person becomes a sewerage undertaker for the area specified in the order, or
 - (b) the person becomes a sewerage undertaker for an area that includes the area specified in the order (in the case of a sewerage undertaker applying for a variation).
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement with a sewerage undertaker for it to permit a main connection into its sewerage system for the benefit of a qualifying person, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with such agreement as is mentioned in subsection (7), and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the sewerage services industry;
 - (b) the established undertaker's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the established undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage

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- services without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (10) In this section and section 110B “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 110B(1) which would result in, or which would vary or terminate, a main connection agreement, means—
- (a) the Environment Agency, in a case where all parties to the main connection agreement are or would be—
- (i) a sewerage undertaker whose area is wholly in England, or
- (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
- (b) the NRBW, in a case where all parties to the main connection agreement are or would be—
- (i) a sewerage undertaker whose area is wholly in Wales, or
- (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
- (c) both the Environment Agency and the NRBW, in any other case.
- (11) In this section and sections 110B to 110J—
- “main connection” means—
- (a) a connection between a sewer or disposal main and a sewer or disposal main, or
- (b) a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works;
- “main connection agreement” means an agreement with one or more sewerage undertakers for that undertaker or each of them to permit a main connection into its sewerage system and includes—
- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
- (b) any agreement which has been varied by order under section 110B(1).

110B Variation and termination of main connection agreements

- (1) On the application of any party to a main connection agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of this Part that the main connection agreement should be varied or terminated, and
- (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement,
- by order vary or terminate the main connection agreement.
- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency.

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- (3) If an order under subsection (1) is made in relation to a main connection agreement, the agreement—
 - (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect (as the case may be).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a main connection agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (6) Subsection (5)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement to vary or terminate a main connection agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the established undertaker in complying with its obligations under the main connection agreement in question and to the desirability of—
 - (a) facilitating effective competition within the sewerage services industry;
 - (b) the established undertaker's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the established undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (8) In this section and sections 110C to 110J “established undertaker”, in relation to a sewerage agreement, means the sewerage undertaker which is required by the agreement to permit a main connection into its sewerage system.

110C Codes in respect of main connection agreements

- (1) The Authority may issue one or more codes in respect of main connection agreements.
- (2) A code may make provision about—
 - (a) procedures in connection with making an agreement to permit a main connection into a sewerage undertaker's sewerage system;

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- (b) procedures in connection with varying or terminating a main connection agreement;
 - (c) procedures to be followed by the Authority in determining whether to make an order under section 110A(3) or 110B(1);
 - (d) the terms and conditions of a main connection agreement, including terms as to the duration of such an agreement;
 - (e) principles for determining the terms and conditions that should or should not be incorporated into a main connection agreement;
 - (f) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) If the Authority considers that a sewerage undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) The Authority may not give a direction under subsection (3) requiring a person to enter into, vary or terminate an agreement.
- (5) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (6) A code may make different provision for different persons or different descriptions of person.
- (7) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (8) A revised code may include provision for applying any of its revisions to main connection agreements made before the revised code comes into force.

110D Codes under section 110C: procedure

- (1) Before issuing a code under section 110C, the Authority must—
- (a) prepare a draft of the proposed code under section 110C, and
 - (b) consult such persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (3) Before a code under section 110C prepared by the Authority is issued, the Minister may direct the Authority—
- (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In subsection (3) “the Minister” means—
- (a) the Secretary of State, so far as a code prepared by the Authority relates to main connection agreements under which—
 - (i) the main connection into a sewerage system, or
 - (ii) each such connection,

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- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
- (b) the Welsh Ministers, so far as a code prepared by the Authority relates to main connection agreements under which—
- (i) the main connection into a sewerage system, or
 - (ii) each such connection,
- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
- (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
 - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such main connection agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such main connection agreements as are referred to in that paragraph on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.

110E Codes under section 110C: minor or urgent revisions

- (1) This section applies if the Authority propose to issue a revised code under section 110C and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 110D does not apply to the revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
- (a) the issuing of the revised code, and

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- (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

110F Rules about charges for permitting main connections

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a main connection agreement.
- (2) The rules may in particular make provision about—
 - (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—
 - (a) make different provision for different sewerage undertakers or different descriptions of sewerage undertaker;
 - (b) make different provision for different purposes;
 - (c) make provision subject to exceptions.
- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (7) The Authority must issue revised rules if—
 - (a) guidance is issued under section 110J, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (8) Revised rules may include provision for applying any of the revisions to main connection agreements made before the revised rules come into effect.

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110G Rules under section 110F: provision about the reduction of charges

- (1) Rules under section 110F may provide for the reduction of charges payable under a main connection agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
 - (a) specify conditions by reference to any party to a main connection agreement;
 - (b) require that steps be taken for the purpose of reducing the cost to a sewerage undertaker of permitting a main connection into its sewerage system;
 - (c) specify conditions about reducing charges payable by a person who—
 - (i) is not party to the agreement, and
 - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition falling within paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the sewerage undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
 - (a) make provision as to the content of the notice;
 - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
 - (a) the provision of the rules that brings about the reduction in the charge;
 - (b) the amount of the charge, with and without the reduction;
 - (c) the period for which the reduction has effect.

110H Rules under section 110F: procedure

- (1) Before issuing rules under section 110F, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 110J in making rules under section 110F.
- (4) Before rules under section 110F prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
 - (a) the Secretary of State, so far as rules prepared by the Authority relate to main connection agreements under which—
 - (i) the main connection into a sewerage system, or
 - (ii) each such connection,

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- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
- (b) the Welsh Ministers, so far as rules prepared by the Authority relate to main connection agreements under which—
- (i) the main connection into a sewerage system, or
 - (ii) each such connection,
- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
- (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
 - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.
- (6) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (7) This section is subject to section 110I.

110I Rules under section 110F: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 110F and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 110H does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
- (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,

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whichever is the sooner.

- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 110H.

110J Rules under section 110F: guidance

- (1) The Minister may issue guidance as to the content of rules under section 110F.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Welsh Ministers;
 - (b) the Secretary of State;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
 - (a) the Secretary of State, in relation to main connection agreements under which—
 - (i) any main connection into a sewerage system, or
 - (ii) each such connection,
 is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
 - (b) the Welsh Ministers, in relation to main connection agreements under which—
 - (i) any main connection into a sewerage system, or
 - (ii) each such connection,

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- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
- (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
 - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.”
- (2) In sections 110B to 110J of the Water Industry Act 1991 (as substituted by subsection (1))—
- (a) a reference to a main connection agreement includes a reference to an old main connection agreement, and
 - (b) a reference to an established undertaker, in relation to a main connection agreement, is to be construed accordingly.
- (3) For the purposes of subsection (2)—
- (a) “old main connection agreement” means an agreement made before the coming into force of subsection (1) that is an agreement with one or more sewerage undertakers for that undertaker or each of them to permit a main connection into its sewerage system, and includes an order under old section 110A which is deemed to be an agreement by virtue of old section 110A(5);
 - (b) references to old section 110A are references to section 110A, as that section had effect before being substituted under subsection (1).

Commencement Information

- I5** S. 9(1) in force at 1.11.2016 for specified purposes by [S.I. 2016/1007](#), [art. 2\(c\)\(i\)](#)
- I6** S. 9 in force at 1.4.2018 for specified purposes for E. by [S.I. 2018/397](#), [art. 2\(b\)](#)
- I7** S. 9(2)(3) in force at 1.11.2016 for specified purposes by [S.I. 2016/1007](#), [art. 2\(c\)\(ii\)](#)

Agreements to adopt infrastructure

10 Agreements by water undertakers to adopt infrastructure

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 51A (agreements to adopt a water main or service pipe at a future date)—
- (a) in subsection (3) (application to make an agreement under section 51A), for the words from “make an application” to the end there is substituted “request a water undertaker to make an agreement under this section.”;
 - (b) subsections (4) to (8) are repealed;
 - (c) after subsection (9) there is inserted—

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“(9A) The reference in subsection (9) to an agreement made under this section includes a reference to—

- (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
- (b) an agreement which has been varied by order under section 51C(1).”

(3) For section 51B (appeals with respect to adoption) and section 51C (financial conditions of compliance) there is substituted—

“51B Adoption at a future date: orders by Authority

- (1) This section applies where a person constructing or proposing to construct a water main or service pipe makes a request to a water undertaker under section 51A(3).
- (2) The person or the water undertaker may apply to the Authority for an order under subsection (4) if the person and the water undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the water undertaker, make an order under subsection (4) if the Authority is satisfied that—
 - (a) it is appropriate for work proposed to be done by a person other than the water undertaker to be so done, and
 - (b) the person and the water undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—
 - (a) require the water undertaker to give such undertakings as to the vesting of the water main or service pipe in the undertaker as the Authority may specify, and
 - (b) impose such terms and conditions as regards taking the benefit of the undertakings as the Authority may specify.
- (5) An order under subsection (4) has effect as an agreement under section 51A between the person and the water undertaker.
- (6) The Authority may not, by order under subsection (4), require a water undertaker to vest in itself a water main or service pipe as regards which there is a contravention of any of the requirements of section 74 that are prescribed for the purposes of this subsection.
- (7) The Authority may not make an order under subsection (4) with respect to a water main or service pipe that is situated within the area of another water undertaker, until either—
 - (a) that other undertaker has consented in writing to the making of the order, or
 - (b) the Minister, on an application made to the Minister, has disappplied paragraph (a), either unconditionally or subject to such conditions as the Minister thinks fit.
- (8) “The Minister” means—

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- (a) the Secretary of State, as regards the consent of a water undertaker whose area is wholly or mainly in England;
 - (b) the Welsh Ministers, as regards the consent of a water undertaker whose area is wholly or mainly in Wales.
- (9) Neither the CMA nor the Authority may exercise, in respect of an agreement for the vesting of a water main or service pipe in a water undertaker at a future date, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (10) Subsection (9)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement for the vesting of a water main or service pipe at a future date, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (11) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the water supply industry;
 - (b) the recovery by the water undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the water undertaker to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the water undertaker to meet its existing obligations, or likely future obligations, to supply water.

51C Variation and termination of section 51A agreements

- (1) On the application of a party to a section 51A agreement to vary (or terminate) the agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient that the section 51A agreement should be varied (or terminated),
 - (b) if the Authority is satisfied, in the case of an application to vary the agreement, that it is appropriate for work proposed to be done by a person other than the water undertaker to be so done, and
 - (c) if the Authority is satisfied that variation (or termination) cannot be achieved by agreement within a reasonable time,
- by order vary (or terminate) the section 51A agreement.
- (2) If an order under subsection (1) is made in relation to a section 51A agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect, as the case may be.

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- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 51A agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement to vary or terminate a section 51A agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the water undertaker in complying with its obligations under the section 51A agreement in question and to the desirability of—
 - (a) facilitating effective competition within the water supply industry;
 - (b) the recovery by the water undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the water undertaker to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the water undertaker to meet its existing obligations, or likely future obligations, to supply water.
- (7) In this section and sections 51CA to 51CG “section 51A agreement” means an agreement with a water undertaker for the vesting of a water main or service pipe in a water undertaker at a future date and includes—
 - (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
 - (b) any agreement which has been varied by order under subsection (1).

51CA Codes in respect of section 51A agreements

- (1) The Authority must issue a code in respect of section 51A agreements.
- (2) The code may make provision about—
 - (a) procedures in connection with making an agreement under section 51A;
 - (b) procedures in connection with varying or terminating a section 51A agreement;
 - (c) procedures to be followed by the Authority in determining whether to make an order under section 51B(4) or 51C(1);

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- (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a water undertaker;
 - (e) the terms and conditions of a section 51A agreement;
 - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 51A agreement;
 - (g) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) Provision under subsection (2)(c) may in particular require the Authority to consult—
- (a) the Chief Inspector of Drinking Water;
 - (b) the Chief Inspector of Drinking Water for Wales if there is one.
- (4) Provision under subsection (2)(d) may include in particular provision about circumstances relating to—
- (a) the nature of the work;
 - (b) the kind of premises supplied or to be supplied.
- (5) Provision under subsection (2)(e) may include in particular provision about terms and conditions as regards—
- (a) constructing associated infrastructure;
 - (b) vesting associated infrastructure in a water undertaker;
 - (c) constructing water mains so as to meet additional supply requirements;
 - (d) connecting new water mains or service pipes to the existing supply system of a water undertaker;
 - (e) complying with requirements of the kind referred to in section 47(2);
 - (f) the duration of a section 51A agreement.
- (6) If the Authority considers that a water undertaker is not acting as required by the code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) The Authority may not give a direction under subsection (6) requiring a person to enter into, vary or terminate an agreement.
- (8) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (9) The code may make different provision for different persons or descriptions of person.
- (10) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (11) A revised code may include provision for applying any of its revisions to section 51A agreements made before the revised code comes into force.

51CB Codes under section 51CA: procedure

- (1) Before issuing a code under section 51CA, the Authority must—
- (a) prepare a draft of the proposed code under section 51CA, and
 - (b) consult the relevant persons about the proposed code.

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- (2) The relevant persons are—
 - (a) the Chief Inspector of Drinking Water;
 - (b) the Chief Inspector of Drinking Water for Wales if there is one;
 - (c) such other persons as the Authority considers appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (4) Before a code under section 51CA prepared by the Authority is issued, the Minister may direct the Authority—
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (5) Subsection (4) is subject to subsections (7) and (8).
- (6) In subsection (4) “the Minister” means—
 - (a) the Secretary of State, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) The power under subsection (4) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (8) If the power under subsection (4) is not exercised by the Secretary of State or the Welsh Ministers on the first occasion on which it may be exercised by the Secretary of State or (as the case may be) the Welsh Ministers, it may not be exercised by the Secretary of State or (as the case may be) the Welsh Ministers on a later occasion.
- (9) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (10) This section is subject to section 51CC.

51CC Codes under section 51CA: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 51CA and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 51CB does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised code, and

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- (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

51CD Rules about charges in connection with a section 51A agreement

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a section 51A agreement.
- (2) The rules may in particular make provision about—
 - (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) The rules may require a water undertaker, upon declaring a water main or service pipe to be vested in the undertaker in accordance with a section 51A agreement, to pay to the other party to the agreement an amount (which may be nil) determined in accordance with the rules.
- (4) Rules made by virtue of subsection (3) may, in particular, provide for the determination to take into account—
 - (a) revenue that might be derived from the water main or service pipe in question;
 - (b) costs that might have been incurred in providing such a water main or service pipe.
- (5) The rules may also make provision as to—
 - (a) the amount of security that may be required by a water undertaker for the purposes of any charges imposed by the water undertaker under a section 51A agreement;
 - (b) the type of security that may be required;
 - (c) the payment of interest on a sum deposited with a water undertaker by way of security.
- (6) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.

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- (8) The rules may make different provision for different water undertakers or descriptions of undertaker.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
 - (a) guidance is issued under section 51CG, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (11) Revised rules may include provision for applying any of their revisions to section 51A agreements made before the revised rules come into effect.

51CE Rules under section 51CD: procedure

- (1) Before issuing rules under section 51CD, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any water undertakers or other persons likely to be affected by the rules;
 - (e) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which the relevant persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 51CG in making rules under section 51CD.
- (5) Before rules under section 51CD prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
 - (a) the Secretary of State, so far as the rules relate to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules relate to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 51CF.

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51CF Rules under section 51CD: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 51CD and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 51CE does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 51CE.

51CG Rules under section 51CD: guidance

- (1) The Minister may issue guidance as to the content of rules under section 51CD.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;

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- (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
- (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the guidance is as to the content of rules relating to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.”
- (4) In section 51E (sections 51A to 51D: supplementary), in subsection (2), for “In sections 51A to 51C above” there is substituted “In section 51A”.

Commencement Information

- I8** S. 10(1) in force at 18.12.2015 for specified purposes by [S.I. 2015/1938, art. 2\(b\)\(i\)](#)
- I9** S. 10(1) in force at 1.4.2017 for E. for specified purposes by [S.I. 2017/462, art. 3\(d\)\(i\)](#)
- I10** [S. 10\(1\)\(3\)](#) in force at 1.10.2017 for E. in so far as not already in force by [S.I. 2017/462, art. 4\(a\)](#) (with [art. 15](#))
- I11** [S. 10\(2\)\(4\)](#) in force at 1.10.2017 for E. by [S.I. 2017/462, art. 4\(a\)](#)
- I12** S. 10(3) in force at 18.12.2015 for specified purposes by [S.I. 2015/1938, art. 2\(b\)\(ii\)](#)
- I13** S. 10(3) in force at 1.4.2017 for E. for specified purposes by [S.I. 2017/462, art. 3\(d\)\(ii\)](#)

11 Agreements by sewerage undertakers to adopt infrastructure

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 104 (agreements to adopt a sewer, drain or sewage disposal works at a future date)—
- (a) in subsection (2) (application to make an agreement under section 104), for the words from “make an application” to the end there is substituted “request a sewerage undertaker to make an agreement under this section.”;
 - (b) subsections (3), (4) and (6A) are repealed;
 - (c) after subsection (5) there is inserted—
 - “(5A) The reference in subsection (5) to an agreement made under this section includes a reference to—
 - (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
 - (b) any agreement which has been varied by order under section 105ZB(1).”

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(3) After section 105 there is inserted—

“105ZA Adoption at a future date: orders by Authority

- (1) This section applies where a person mentioned in section 104(1)(a) or (b) makes a request to a sewerage undertaker under section 104(2).
- (2) The person or the sewerage undertaker may apply to the Authority for an order under subsection (4) if the person and the sewerage undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the sewerage undertaker, make an order under subsection (4) if the Authority is satisfied that—
 - (a) where the person is such person as is mentioned in section 104(1)(a), it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
 - (b) the person and the sewerage undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—
 - (a) require the sewerage undertaker to give such undertakings as to the vesting of the sewer, such part of the drain as constitutes the lateral drain or the works in the undertaker as the Authority may specify, and
 - (b) impose such terms and conditions as regards taking the benefit of the undertakings as the Authority may specify.
- (5) An order under subsection (4) has effect as an agreement under section 104 between the person and the sewerage undertaker.
- (6) The Authority may not make an order under subsection (4) with respect to—
 - (a) a sewer, drain or sewage disposal works situated in the area of another undertaker, or
 - (b) a drain which is intended to communicate with a sewer which—
 - (i) is so situated, or
 - (ii) is vested in another sewerage undertaker,until one of the conditions mentioned in subsection (7) is satisfied.
- (7) The conditions are that—
 - (a) the other sewerage undertaker has consented in writing to the making of the order, or
 - (b) the Minister, on an application made to the Minister, has disapplied paragraph (a), either unconditionally or subject to such conditions as the Minister thinks fit.
- (8) “The Minister” means—
 - (a) the Secretary of State, as regards the consent of a sewerage undertaker whose area is wholly or mainly in England;
 - (b) the Welsh Ministers, as regards the consent of a sewerage undertaker whose area is wholly or mainly in Wales.

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- (9) Neither the CMA nor the Authority may exercise, in respect of an agreement for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (10) Subsection (9)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (11) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the sewerage services industry;
 - (b) the recovery by the sewerage undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the sewerage undertaker to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the sewerage undertaker to meet its existing obligations, or likely future obligations, to provide sewerage services.

105ZB Variation and termination of section 104 agreements

- (1) On the application of a party to a section 104 agreement to vary (or terminate) the agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient that the section 104 agreement should be varied (or terminated),
 - (b) if the Authority is satisfied, in the case of an application to vary the agreement involving such person as is mentioned in section 104(1) (a), that it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
 - (c) if the Authority is satisfied that variation (or termination) cannot be achieved by agreement within a reasonable time,
- by order vary (or terminate) the section 104 agreement.
- (2) If an order under subsection (1) is made in relation to a section 104 agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect, as the case may be.

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- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 104 agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement to vary or terminate a section 104 agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the sewerage undertaker in complying with its obligations under the section 104 agreement in question and to the desirability of—
 - (a) facilitating effective competition within the sewerage services industry;
 - (b) the recovery by the sewerage undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the sewerage undertaker to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the sewerage undertaker to meet its existing obligations, or likely future obligations, to provide sewerage services.
- (7) In this section and sections 105ZC to 105ZI “section 104 agreement” means an agreement with a sewerage undertaker for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event and includes—
 - (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
 - (b) any agreement which has been varied by order under subsection (1).

105ZC Codes in respect of section 104 agreements

- (1) The Authority must issue a code in respect of section 104 agreements.
- (2) The code may make provision about—
 - (a) procedures in connection with making an agreement under section 104;
 - (b) procedures in connection with varying or terminating a section 104 agreement;

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- (c) procedures to be followed by the Authority in determining whether to make an order under section 105ZA(4) or 105ZB(1);
 - (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a sewerage undertaker;
 - (e) the terms and conditions of a section 104 agreement;
 - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 104 agreement;
 - (g) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) Provision under subsection (2)(d) may include in particular provision about circumstances relating to—
- (a) the nature of the work;
 - (b) the kind of premises supplied or to be supplied.
- (4) Provision under subsection (2)(e) may include in particular provision about terms and conditions as regards—
- (a) constructing associated infrastructure;
 - (b) vesting associated infrastructure in a sewerage undertaker;
 - (c) making a communication with public sewers.
- (5) If the Authority considers that a sewerage undertaker is not acting as required by the code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (6) The Authority may not give a direction under subsection (5) requiring a person to enter into, vary or terminate an agreement.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
- (8) The code may make different provision for different persons or descriptions of person.
- (9) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (10) A revised code may include provision for applying any of its revisions to section 104 agreements made before the revised code comes into force.

105ZD Codes under section 105ZC: procedure

- (1) Before issuing a code under section 105ZC, the Authority must—
- (a) prepare a draft of the proposed code under section 105ZC, and
 - (b) consult such persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (3) Before a code under section 105ZC prepared by the Authority is issued, the Minister may direct the Authority—
- (a) not to issue the code, or
 - (b) to issue the code with specified modifications.

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- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In this section “the Minister” means—
 - (a) the Secretary of State, so far as the code relates to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the code relates to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.
- (6) The power under subsection (3) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (7) If the power under subsection (3) is not exercised by the Secretary of State or the Welsh Ministers on the first occasion on which it may be exercised by the Secretary of State or (as the case may be) the Welsh Ministers, it may not be exercised by the Secretary of State or (as the case may be) the Welsh Ministers on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) This section is subject to section 105ZE.

105ZE Codes under section 105ZC: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 105ZC and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZD does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised code, and
 - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

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105ZF Rules about charges in connection with a section 104 agreement

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a section 104 agreement.
- (2) The rules may in particular make provision about—
 - (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) The rules may require a sewerage undertaker, upon declaring a sewer, drain or sewage disposal works to be vested in the undertaker in accordance with a section 104 agreement, to pay to the other party to the agreement an amount (which may be nil) determined in accordance with the rules.
- (4) Rules made by virtue of subsection (3) may, in particular, provide for the determination to take into account—
 - (a) revenue that might be derived from the sewer, drain or sewage disposal works in question;
 - (b) costs that might have been incurred in providing such a sewer, drain or sewage disposal works.
- (5) The rules may also make provision as to—
 - (a) the amount of security that may be required by a sewerage undertaker for the purposes of any charges imposed by the sewerage undertaker under a section 104 agreement;
 - (b) the type of security that may be required;
 - (c) the payment of interest on a sum deposited with a sewerage undertaker by way of security.
- (6) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make different provision for different sewerage undertakers or descriptions of undertaker.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
 - (a) guidance is issued under section 105ZI, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

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- (11) Revised rules may include provision for applying any of their revisions to section 104 agreements made before the revised rules come into effect.

105ZG Rules under section 105ZF: procedure

- (1) Before issuing rules under section 105ZF, the Authority must—
- (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
- (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any sewerage undertakers or other persons likely to be affected by the rules;
 - (e) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which the relevant persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 105ZI in making rules under section 105ZF.
- (5) Before rules under section 105ZF prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
- (a) the Secretary of State, so far as the rules relate to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules relate to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 105ZH.

105ZH Rules under section 105ZF: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 105ZF and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZG does not apply to the proposed revised rules.

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- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
 whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 105ZG.

105ZI Rules under section 105ZF: guidance

- (1) The Minister may issue guidance as to the content of rules under section 105ZF.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.

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- (7) In this section “the Minister” means—
- (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the guidance is as to the content of rules relating to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.”
- (4) In section 107 (right of sewerage undertaker to undertake the making of communications with public sewers), after subsection (1) there is inserted—
- “(1A) A sewerage undertaker may not give notice to a person under subsection (1) if—
- (a) the undertaker and the person entered into an agreement under section 104, and
 - (b) the agreement provides for the communication to which the person's proposal relates to be made by the person.”
- (5) In section 108 (communication works by person entitled to communication), in subsection (1), after “section 106 above” there is inserted “ or may not make such an election because of section 107(1A) ”.

Commencement Information

- I14** S. 11(1) in force at 18.12.2015 for specified purposes by [S.I. 2015/1938, art. 2\(c\)\(i\)](#)
- I15** S. 11(1) in force at 1.4.2017 for E. for specified purposes by [S.I. 2017/462, art. 3\(e\)\(i\)](#)
- I16** [S. 11\(1\)\(3\)](#) in force at 1.10.2017 for E. in so far as not already in force by [S.I. 2017/462, art. 4\(b\)](#)
- I17** [S. 11\(2\)\(4\)](#) in force at 1.10.2017 for E. by [S.I. 2017/462, art. 4\(b\)](#)
- I18** S. 11(3) in force at 18.12.2015 for specified purposes by [S.I. 2015/1938, art. 2\(c\)\(ii\)](#)
- I19** S. 11(3) in force at 1.4.2017 for E. for specified purposes by [S.I. 2017/462, art. 3\(e\)\(ii\)](#)

PROSPECTIVE

Arrangements for water undertakers to take water

12 Arrangements for water undertakers to take water from other persons

In Part 3 of the Water Industry Act 1991, after Chapter 2A there is inserted—

“CHAPTER 2B

ADDITIONAL SOURCES OF WATER

66M Arrangements for water undertakers to take water from other persons

- (1) The Minister may by regulations make provision about the supply of water to a water undertaker by a person other than a water undertaker.

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- (2) Regulations under this section may, in particular—
- (a) confer functions on the Authority, the Secretary of State and the Welsh Ministers;
 - (b) make provision preventing the CMA or the Authority from exercising powers under the Competition Act 1998 in respect of a water supply agreement;
 - (c) include provision described in sections 66N and 66O;
 - (d) make provision excepting water supply agreements of such description as the regulations may specify from the effect of—
 - (i) any provision of the regulations, or
 - (ii) any provision of the codes or rules made under the regulations.
- (3) In this Chapter—
- “the Minister” means—
- (a) the Secretary of State, in relation to the supply of water to a water undertaker whose area is wholly or mainly in England, and
 - (b) the Welsh Ministers, in relation to the supply of water to a water undertaker whose area is wholly or mainly in Wales;
- “relevant person” means a person other than a water undertaker;
- “water supply agreement” means an agreement for the supply of water to a water undertaker by a relevant person.
- (4) Nothing in provision made under this Chapter affects a water supply agreement made before any regulations under this section first come into force.

66N Orders in respect of supplies by relevant persons

- (1) Regulations under section 66M may, in particular, make provision for the Authority by order—
- (a) to require a water undertaker to take a supply of water from a relevant person, and
 - (b) to vary or terminate a water supply agreement.
- (2) Provision made under subsection (1)(a) must provide that—
- (a) the Authority may make an order only on an application by the water undertaker or the relevant person, and
 - (b) before making an order the Authority must be satisfied that the water undertaker and the relevant person cannot reach agreement.
- (3) Provision made under subsection (1)(b) must provide that the Authority may make an order only on an application by a party to the agreement.
- (4) The provision that may be made under subsection (1) includes—
- (a) provision about the circumstances in which the Authority may make an order;
 - (b) provision requiring the Authority to consult the Environment Agency, the NRBW or both of them before making an order;

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- (c) provision requiring the Authority to have regard to whether a person has complied with a code or rules described in section 66O;
- (d) provision enabling the Authority to specify the times at which, the period during which and the terms and conditions on which the supply of water must be taken;
- (e) provision for an order made by the Authority requiring a supply of water to be taken to have effect as an agreement between the water undertaker and the relevant person (or those persons and other persons);
- (f) provision requiring a party to a water supply agreement to pay compensation to another party on the variation or termination of the agreement.

66O Codes and rules in respect of water supply agreements

- (1) Regulations under section 66M may, in particular, make provision for the Authority to issue one or more codes in respect of water supply agreements, including—
 - (a) provision for a code to include provision about procedures in connection with making, varying or terminating a water supply agreement;
 - (b) provision for a code to include provision about the terms and conditions of water supply agreements;
 - (c) provision for a code to include provision about procedures to be followed by the Authority in determining whether to make an order described in section 66N;
 - (d) provision for the Authority to direct water undertakers to comply with a code;
 - (e) provision for such directions to be enforceable by the Authority under section 18;
 - (f) provision for the Minister to require a code to be revised or to prevent a code being issued or revised (but see subsections (3) and (4)).
- (2) Regulations under section 66M may, in particular, make provision for the Authority to issue and enforce rules about charges that may be imposed under water supply agreements, including—
 - (a) provision for the making of rules about the amount or maximum amount of a charge;
 - (b) provision for the Authority to direct water undertakers to comply with the rules;
 - (c) provision for such directions to be enforceable by the Authority under section 18;
 - (d) provision for the Minister to issue guidance as to the content of the rules (but see subsection (4));
 - (e) provision for the Minister to prevent rules being issued (but see subsection (4)).
- (3) Regulations conferring a power on the Minister as described in subsection (1) (f) must provide that—
 - (a) if the power is exercised to impose a requirement in respect of agreements for such supplies of water as are referred to

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- in paragraph (a) or (b) of the definition of “the Minister” in section 66M(3), it may not be exercised again in respect of such supplies of water as are referred to in that paragraph, and
- (b) if the power to impose a requirement in respect of agreements for such supplies of water as are referred to in paragraph (a) or (b) of the definition of “the Minister” in section 66M(3) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such agreements as are referred to in that paragraph on a later occasion.
- (4) Functions conferred by provision described in subsection (1)(f) or (2)(d) or (e) must be conferred on the Secretary of State and the Welsh Ministers acting jointly so far as the code, guidance or rules relate to—
- (a) a supply of water to a water undertaker whose area is wholly or mainly in England by means of the supply system of a water undertaker whose area is wholly or mainly in Wales;
- (b) a supply of water to a water undertaker whose area is wholly or mainly in Wales by means of the supply system of a water undertaker whose area is wholly or mainly in England.
- (5) References in this section to a water undertaker's supply system are to be construed in accordance with section 17B.

66P Procedure etc

- (1) A statutory instrument containing regulations under section 66M may not be made unless a draft of the instrument has been laid before and approved by a resolution of—
- (a) each House of Parliament, in the case of regulations made by the Secretary of State, or
- (b) the Assembly, in the case of regulations made by the Welsh Ministers.
- (2) Before laying a draft of an instrument in accordance with subsection (1), the Minister must consult—
- (a) the Authority,
- (b) water undertakers,
- (c) water supply licensees,
- (d) the Chief Inspector of Drinking Water,
- (e) the Chief Inspector of Drinking Water for Wales if there is one,
- (f) the Environment Agency,
- (g) the NRBW,
- (h) the Council, and
- (i) such other persons as the Minister considers appropriate.
- (3) The supplemental and consequential provision that regulations under section 66M may include by virtue of section 213(2)(f) includes provision amending, repealing or revoking provision made by or under an enactment.
- (4) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 66M as it applies to regulations made by the Secretary of State.

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- (5) If a draft of an instrument containing regulations under section 66M would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.
- (6) In this section “enactment” includes a Measure or Act of the Assembly.”

Appointments and variations

13 Procedure with respect to appointments and variations

- (1) Section 8 of the Water Industry Act 1991 (procedure with respect to appointments and variations replacing relevant undertakers) is amended as follows.
- (2) In subsection (2)(a) (the Water Services Regulation Authority to serve notice of application), for “on the existing appointee the NRA and on every” there is substituted “on—
 - (i) the existing appointee,
 - (ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
 - (iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
 - (iv) the appropriate agency, and
 - (v) every”.
- (3) In subsection (4)(b) (the Secretary of State or the Water Services Regulation Authority to serve notice of proposed appointment or variation), for “on the existing appointee the NRA and on every” there is substituted “on—
 - (i) the existing appointee,
 - (ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
 - (iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
 - (iv) the appropriate agency, and
 - (v) every”.
- (4) In subsection (5)(b) (the Secretary of State or the Water Services Regulation Authority to serve notice of the making of an appointment or variation), for “on the NRA and on every” there is substituted “on—
 - (i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,

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- (ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
- (iii) the appropriate agency, and
- (iv) every”.

(5) After subsection (6) insert—

“(6A) In this section “the appropriate agency”, in relation to the replacement of a relevant undertaker, means—

- (a) the Environment Agency, if the undertaker's area is wholly in England;
- (b) the NRBW, if the undertaker's area is wholly in Wales;
- (c) both the Environment Agency and the NRBW, if the undertaker's area is partly in England and partly in Wales.”

Duty of CMA to refer mergers of relevant undertakers

14 Exceptions to duty and undertakings in lieu of merger references

(1) In section 32 of the Water Industry Act 1991 (duty to refer merger of water or sewerage undertaking), for “Subject to section 33 below,” there is substituted “ Subject to sections 33 and 33A below, ”.

(2) After section 33 (exclusion of small mergers) there is inserted—

“33A Exceptions to duty to make reference

- (1) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(a) if it believes that—
 - (a) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a merger reference;
 - (b) the prospective merger is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
 - (c) the prospective merger is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (2) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(b) if it believes that—
 - (a) the merger has not prejudiced and is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
 - (b) the merger has prejudiced or is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (3) Before forming a view as to the matters in subsection (1)(b) or (c) or (2)(a) or (b), the CMA must—

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- (a) request the Authority to give an opinion under section 33B, and
 - (b) consider that opinion.
- (4) The CMA may not make a merger reference under section 32 if—
- (a) it is considering whether to accept an undertaking under section 33D instead of making such a reference; or
 - (b) it is prevented by section 74 of the Enterprise Act 2002 (effect of accepting an undertaking in lieu), in a case where that section as applied by paragraph 1 of Schedule 4ZA may have effect to prevent such a merger reference.
- (5) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA.

33B Opinion of the Authority

- (1) Where the CMA makes a request under section 33A(3), the Authority must give its opinion on—
- (a) whether and to what extent the actual or prospective merger has prejudiced or is likely to prejudice the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises, and
 - (b) where it forms the view that the actual or prospective merger has prejudiced or is likely to prejudice that ability, whether the prejudice in question is outweighed by any relevant customer benefits relating to the merger.
- (2) In forming an opinion on the matters in subsection (1), the Authority must apply the methods set out in the statement under section 33C that has effect when the request under section 33A(3) is made.
- (3) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of this section as references to what the Authority believes.

33C Statement of methods

- (1) The Authority must prepare and keep under review a statement of the methods to be applied in forming an opinion on the matters in section 33B(1).
- (2) The statement must in particular set out—
- (a) the criteria to be used for assessing the effect of any particular water enterprise ceasing to be a distinct enterprise on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises;
 - (b) the relative weight to be given to the criteria.
- (3) Before preparing or altering the statement, the Authority must consult—
- (a) the Secretary of State,
 - (b) the Welsh Ministers,
 - (c) the CMA, and

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(d) relevant undertakers.

(4) The Authority must from time to time publish the statement as it has effect for the time being.”

(3) After section 33C (inserted by subsection (2)) there is inserted—

“33D Undertakings in lieu of a merger reference

(1) If the CMA considers that it is under a duty to make a merger reference under section 32, it may instead of making such a reference accept undertakings to take such action as it thinks appropriate from such of the parties concerned in the actual or prospective merger as it considers appropriate.

(2) The power under subsection (1) is to be exercised for the purpose of remedying, mitigating or preventing the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises that the actual or prospective merger has had, may have had or may be likely to have.

(3) In forming a view for the purposes of subsection (1) as to whether it is under a duty to make a merger reference under section 32, the CMA—

- (a) is to disregard the effect of section 33A(4)(a), but
- (b) is to take into account the powers under section 33A(1) and (2) to decide not to make a merger reference.

(4) In proceeding under subsection (1), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises.

(5) In proceeding under subsection (1), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the actual or prospective merger.

(6) Before deciding whether or not to accept an undertaking under this section, the CMA must—

- (a) request the Authority to give its opinion on the effect of the undertakings offered, and
- (b) consider the Authority's opinion.

(7) Where the CMA makes a request under subsection (6), the Authority must give its opinion on the effect of the undertakings offered.

(8) An undertaking under this section—

- (a) comes into force when accepted;
- (b) may be varied or superseded by another undertaking under this section;
- (c) may be released by the CMA.

(9) An undertaking under this section ceases to be in force if an order under section 75 or 76 of the Enterprise Act 2002 (powers to make an order where an undertaking is not fulfilled) is made, in a case where that provision of the

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Enterprise Act 2002 as applied by paragraph 1 of Schedule 4ZA may have effect in relation to such an undertaking.

- (10) The CMA must consider any representations received by it in relation to varying or releasing an undertaking under this section as soon as reasonably practicable.
- (11) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of subsection (7) as references to what the Authority believes.”

Commencement Information

- I20** S. 14(1)(3) in force at 18.12.2015 by S.I. 2015/1938, art. 2(d)
I21 S. 14(2) in force at 6.4.2015 for specified purposes by S.I. 2015/773, art. 2(2)(a)
I22 S. 14(2) in force at 18.12.2015 in so far as not already in force by S.I. 2015/1938, art. 2(d)

15 Exclusion of small mergers: advice of CMA on threshold

In section 33 of the Water Industry Act 1991 (exclusion of small mergers from the duty to make a merger reference under section 32), after subsection (6) there is inserted—

“(6A) The CMA must—

- (a) keep under review the conditions set out in subsection (1)(a) and (b), and
- (b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.”

Relevant undertakers' charges

16 Charges schemes

- (1) In section 143 of the Water Industry Act 1991 (charges schemes), for subsections (6) to (9) (charges scheme not to take effect until approved by the Water Services Regulation Authority, etc), there is substituted—

“(6) If the Authority considers that a relevant undertaker's charges scheme does not comply with—

- (a) subsection (2), (3) or (5),
- (b) regulations under section 143A,
- (c) rules under section 143B, or
- (d) section 144A(9), (10) or (11)(a),

the Authority may give the undertaker a direction to do, or not to do, a thing specified in the direction.

- (6A) The Authority must issue rules (and, if it revises rules it has issued, must issue revised rules) about consulting the Council about proposed charges schemes.
- (6B) The rules must require a relevant undertaker that proposes to make a charges scheme to consult the Council about its proposed scheme.

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- (6C) If the Authority considers that a relevant undertaker has not complied with those rules, it may give the undertaker a direction to do, or not to do, a thing specified in the direction.
- (6D) It is the duty of a relevant undertaker to comply with a direction under subsection (6) or (6C), and this duty is enforceable by the Authority under section 18.”

(2) After section 143A there is inserted—

“143B Rules about charges schemes

- (1) The Authority may issue rules about charges schemes under section 143.
- (2) Rules under this section may in particular—
 - (a) make provision about the types of charges that may be imposed;
 - (b) make provision about the amount or maximum amount, or the methods for determining the amount or maximum amount, of any type of charge;
 - (c) make provision about the principles for determining what types of charges may or may not be imposed;
 - (d) make provision about principles for determining the amount of any charge that may be imposed;
 - (e) require particular schemes of charges to be available in specified cases;
 - (f) make provision about the timing of payment of charges;
 - (g) require charges schemes to be published;
 - (h) make provision about how charges schemes are to be published.
- (3) The rules may provide for the reduction of charges under a charges scheme where conditions specified by the rules are satisfied.
- (4) Rules made by virtue of subsection (3) may in particular specify conditions about—
 - (a) taking steps for the purpose of reducing or managing water consumption;
 - (b) taking steps for the purpose of reducing or managing the discharge of matter from premises;
 - (c) taking steps for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.
- (5) The provisions of charges schemes must comply with rules issued under this section.
- (6) The rules may make different provision for different cases, including different provision in relation to different, or different descriptions of, persons, circumstances or localities.
- (7) The power to make rules under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

Changes to legislation: Water Act 2014, CHAPTER 2 is up to date with all changes known to be in force on or before 07 April 2024. 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)

- (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (9) The Authority must issue revised rules if—
 - (a) guidance is issued under section 143E, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (10) Revised rules may include provision for applying any of their revisions to charges schemes under section 143 made before the revised rules come into effect.

143C Rules under section 143B: procedure

- (1) The Authority must have regard to guidance issued under section 143E in making rules under section 143B (as well as to any guidance issued under section 43 or 44 of the Flood and Water Management Act 2010).
- (2) Before issuing rules under section 143B, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any relevant undertakers likely to be affected by the rules;
 - (e) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed rules.
- (5) Before rules under section 143B prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
 - (a) the Secretary of State, so far as the rules in question affect relevant undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules in question affect relevant undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules prepared by the Authority may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 143D.

143D Rules under section 143B: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 143B and, in the view of the Authority, the revision or each of the revisions proposed to be made is—

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Changes to legislation: Water Act 2014, CHAPTER 2 is up to date with all changes known to be in force on or before 07 April 2024. 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) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 143C does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
- (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
- whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
- (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 143C.

143E Rules under section 143B: guidance

- (1) The Minister may issue guidance as to the content of rules under section 143B.
- (2) Before issuing the guidance, the Minister must—
- (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
- (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

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- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
- (a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.”

Commencement Information

- I23** S. 16(1) in force at 1.11.2015 by S.I. 2015/1469, art. 4(a) (with s. 5(4)(5))
- I24** S. 16(2) in force at 15.7.2015 for specified purposes by S.I. 2015/1469, art. 2(a) (with art. 5(4)(5))
- I25** S. 16(2) in force at 1.11.2015 in so far as not already in force by S.I. 2015/1469, art. 4(a) (with s. 5(4)(5))

17 Rules about charges for connections etc

After section 144 of the Water Industry Act 1991 there is inserted—

“Rules about undertakers' charges

144ZA Rules about charges for connections etc

- (1) The Authority may issue rules about charges that may be imposed by a relevant undertaker under—
- (a) section 42(2)(a) (provision of new water main);
 - (b) section 45(6) (connections with water main);
 - (c) section 46(7)(b) (ancillary works for domestic connection);
 - (d) section 99(2)(a) or (2A)(a) (provision of public sewer or lateral drain);
 - (e) section 101B(3) (lateral drains);
 - (f) section 107(3)(b)(i) (communications with public sewers);
 - (g) section 185(5) (moving of pipes etc).
- (2) Rules under this section may in particular—
- (a) make provision about the types of charges that may be imposed;
 - (b) make provision about the amount or maximum amount, or the methods for determining the amount or maximum amount, of any type of charge;
 - (c) make provision about the principles for determining what types of charges may or may not be imposed;
 - (d) make provision about the principles for determining the amount of any charge that may be imposed;
 - (e) provide for charges to be payable over a period;
 - (f) make provision about publication of the charges that may be imposed.
- (3) The charges that may be imposed by a water undertaker under section 42(2)(a) for the provision of a new water main may include charges for—

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- (a) providing such other infrastructure, including other water mains, as it is necessary to provide in consequence of the provision of the new water main;
 - (b) doing works to increase the capacity of an existing water main, or procuring the doing of such works, where the use of that increased capacity is a consequence of the provision of the new water main.
- (4) The charges that may be imposed by a sewerage undertaker under section 99(2)
- (a) for the provision of a new public sewer may include charges for—
 - (a) providing such other infrastructure, including other public sewers, as it is necessary to provide in consequence of the provision of the new public sewer;
 - (b) doing works to increase the capacity of an existing public sewer, where the use of that increased capacity is a consequence of the provision of the new public sewer.
- (5) The rules may make provision as to—
- (a) the amount of security that may be required by a relevant undertaker under section 42(1)(b), 47(2)(a), 99(1)(b), 101B(3A), 107(3)(b)(ii) or 185(4);
 - (b) the type of security that may be required;
 - (c) the payment of interest on a sum deposited with a relevant undertaker by way of security.
- (6) If the Authority considers that a relevant undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a thing specified in the direction.
- (7) It is the duty of a relevant undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make—
- (a) different provision for different persons or different descriptions of person;
 - (b) different provision for different powers to impose charges or different descriptions of such powers.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
- (a) guidance is issued under section 144ZD, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.

144ZB Rules under section 144ZA: procedure

- (1) The Authority must have regard to guidance issued under section 144ZD in making rules under section 144ZA.
- (2) Before issuing rules under section 144ZA, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

Changes to legislation: Water Act 2014, CHAPTER 2 is up to date with all changes known to be in force on or before 07 April 2024. 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)

- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any relevant undertakers likely to be affected by the rules;
 - (e) any water supply or sewerage licensees likely to be affected by the rules;
 - (f) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed rules.
- (5) Before rules under section 144ZA prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
 - (a) the Secretary of State, so far as the rules in question affect relevant undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules in question affect relevant undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules prepared by the Authority may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 144ZC.

144ZC Rules under section 144ZA: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 144ZA and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 144ZB does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

Changes to legislation: Water Act 2014, CHAPTER 2 is up to date with all changes known to be in force on or before 07 April 2024. 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)

- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 144ZB.

144ZD Rules under section 144ZA: guidance

- (1) The Minister must issue guidance as to the content of rules under section 144ZA.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
 - (a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.”

Commencement Information

- I26** S. 17 in force at 6.4.2015 for specified purposes by [S.I. 2015/773](#), **art. 2(1)(b)**
- I27** S. 17 in force at 15.7.2015 for specified purposes by [S.I. 2015/1469](#), **art. 2(b)** (with [art. 5\(1\)\(5\)](#))
- I28** S. 17 in force at 1.4.2016 for E. in so far as not already in force by [S.I. 2016/465](#), **art. 2(d)** (with [Sch. 2](#))
- I29** [S. 17](#) in force at 15.12.2017 for W. in so far as not already in force by [S.I. 2017/1288](#), **art. 2(a)**

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

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18 Charges for providing a water main etc

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 42 (financial conditions for compliance with the duty in section 41 to provide a water main)—
 - (a) in subsection (1)(b) (condition as to providing security), for the words from “such security” to “reasonably required” there is substituted “ such security as charging rules allow and the undertaker may have required ”;
 - (b) in subsection (2) (undertaking to pay), for paragraph (a) there is substituted—
 - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
 - (c) subsections (4) and (5) (interest on sums deposited by way of security) are repealed;
 - (d) in subsection (6) (reference of disputes to Water Services Regulation Authority), in paragraph (b), after “the amount” there is inserted “ or amounts by way of charges ”.
- (3) In section 45 (duty to make domestic connections to a water main)—
 - (a) in subsection (2) (the nature of the duty), the words “, at the expense of the person serving the notice,” are repealed;
 - (b) for subsection (6) there is substituted—
 - “(6) Where a water undertaker carries out any works which it is its duty under this section to carry out, the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules.”;
 - (c) in subsection (6A) (reference of disputes to Authority), for “as to whether the expenses were incurred reasonably” there is substituted “ as to the payments required to be made ”.
- (4) In section 46 (duty to carry out ancillary works for the purpose of making a domestic connection under section 45)—
 - (a) in subsection (1) (the nature of the duty), the words “, at the expense of the person serving the notice,” are repealed;
 - (b) in subsection (7), in paragraph (b), for “under this section at another person's expense” there is substituted “ as its duty under this section ”;
 - (c) in subsection (7), in the words after paragraph (b), for “under that section at another person's expense” there is substituted “ as its duty under that section ”;
 - (d) in subsection (9) (consequences of exercising power under section 46(8) to lay a water main rather than a service pipe), paragraph (b) (maximum expenses recoverable) and the “but” preceding it are repealed.
- (5) In section 47 (conditions of connection with water main)—
 - (a) in subsection (2)(a) (requirement to give security for amounts to be paid), for the words from “such security” to “reasonably require” there is substituted “ such security as charging rules allow and the undertaker requires ”;
 - (b) in subsection (3B) (reference of disputes to Authority), in the opening words, “whether” is repealed;
 - (c) in subsection (3B), for paragraph (a) there is substituted—

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- “(a) the security required to be provided by a condition imposed under subsection (2)(a),”;
- (d) in subsection (3B)(b), at the beginning there is inserted “whether”;
- (e) in subsection (3B)(c), after “particular case,” there is inserted “ whether ”.

Commencement Information

I30 S. 18 in force at 1.4.2018 by [S.I. 2017/462](#), [art. 5\(a\)](#) (with [art. 14](#))

19 Charges for providing a public sewer etc

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 99 (financial conditions for compliance with the duty in section 98 to provide a public sewer or lateral drain)—
 - (a) in subsection (1)(b) (condition as to providing security), for the words from “such security” to “reasonably required” there is substituted “ such security as charging rules allow and the undertaker may have required ”;
 - (b) in subsection (2) (undertaking to pay in respect of public sewer), for paragraph (a) there is substituted—
 - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
 - (c) in subsection (2A) (undertaking to pay in respect of lateral drain), for paragraph (a) there is substituted—
 - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
 - (d) subsections (4) and (5) (interest on sums deposited by way of security) are repealed;
 - (e) in subsection (6) (reference of disputes to the Water Services Regulation Authority), in paragraph (b), after “the amount” there is inserted “ or amounts by way of charges ”.
- (3) In section 101B (power to provide lateral drain following provision of public sewer)—
 - (a) in subsection (3) (obligation to pay for drain requested), for “the costs reasonably incurred in or in connection with providing that drain” there is substituted “ such charges as the undertaker may impose in accordance with charging rules ”;
 - (b) after subsection (3) there is inserted—
 - “(3A) The sewerage undertaker may require the person making a request under this section to provide such security for the payment of the charges as charging rules allow.”;
 - (c) in subsection (4) (reference of disputes to Authority), for paragraph (b) there is substituted—
 - “(b) the amount of any charge imposed.”;
 - (d) in subsection (4), after paragraph (b) there is inserted “or
 - (c) the security required to be provided.”.

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

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- (4) In section 107 (right of a sewerage undertaker to undertake the making of a communication with a public sewer)—
- (a) in subsection (3)(b)(i) (no obligation for undertaker to act until paid an estimated cost of the work in advance), for “the cost of the work” there is substituted “ the amount by way of charges that the undertaker may impose in accordance with charging rules for making the connection ”;
 - (b) in subsection (3)(b)(ii) (no obligation for undertaker to act until given security for payment), for “such security” to the end there is substituted “ such security for the payment of that amount as charging rules allow and it may have required. ”;
 - (c) for subsection (4), there is substituted—
 - “(4) If a payment to a sewerage undertaker under subsection (3) exceeds the charges that may, in the event, be imposed in accordance with charging rules for making the connection in question, the excess is to be repaid by the undertaker; and, if and so far as those charges are not covered by a payment under subsection (3), those charges are to be paid by the person for whom the work was undertaken.”;
 - (d) in subsection (4A) (reference to disputes to Authority), in paragraph (a), for “of the cost of works” there is substituted “ of the amount of charges ”;
 - (e) in subsection (4A), for paragraph (b) (and the “or” following it) there is substituted—
 - “(b) the security required by the undertaker, or”;
 - (f) in subsection (4A), for paragraph (c) there is substituted—
 - “(c) whether any excess is repayable, or any charges are payable, under subsection (4), or the amount of any such excess or charges,”.
- (5) In section 146 (connection charges etc, and charges for highway drainage), in subsection (5)(a), after “expenses incurred by it in” there is inserted “ , or charges imposed by it for, ”.

Commencement Information

I31 S. 19 in force at 1.4.2018 by S.I. 2017/462, art. 5(b) (with art. 14)

20 Charges for moving pipes

In section 185 of the Water Industry Act 1991 (duty to move pipes etc in certain cases), in subsection (5) (recovery of undertaker's expenses), for the words from “the undertaker” to the end there is substituted “ the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules ”.

Commencement Information

I32 S. 20 in force at 1.4.2018 by S.I. 2017/462, art. 5(c) (with art. 14)

Status: Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

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Sustainable drainage

21 Drainage systems relieving public sewers

(1) After section 114 of the Water Industry Act 1991 there is inserted—

“Sustainable drainage

114A Drainage systems relieving public sewers

- (1) Sewerage undertakers may construct, on their own or on another's land, drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.
 - (2) A sewerage undertaker may maintain and operate a drainage system constructed by it under subsection (1).
 - (3) In this section—
 - “drainage system” means a structure designed to receive rainwater and other surface water, other than a natural watercourse;
 - “natural watercourse” means a river or stream;
 - “rainwater” includes snow and other precipitation;
 - “structure” includes—
 - (a) any part of an existing or proposed structure, and
 - (b) any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or other surface water.
 - (4) The powers conferred by subsections (1) and (2) are not to be regarded as functions of a sewerage undertaker for the purposes of section 155 (compulsory purchase of land required for the purposes of carrying out functions of relevant undertakers).”
- (2) In section 158 of that Act (powers to lay pipes in streets), in subsection (7) (meaning of reference to a relevant pipe), in paragraph (b)—
- (a) omit the “or” at the end of both sub-paragraphs (i) and (ii);
 - (b) after sub-paragraph (iii) there is inserted “or
 - (iv) any pipe forming part of, or required in connection with, a drainage system constructed under section 114A.”
- (3) In Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage), after paragraph 19 there is inserted—

“Exception 3: systems under section 114A Water Industry Act 1991

- 19A The adoption duty does not apply to a drainage system constructed under section 114A of the Water Industry Act 1991 (drainage systems relieving public sewers).”

Status:

Point in time view as at 01/04/2018. This version of this chapter contains provisions that are prospective.

Changes to legislation:

Water Act 2014, CHAPTER 2 is up to date with all changes known to be in force on or before 07 April 2024. 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.