



# Water Act 2014

## 2014 CHAPTER 21

### PART 1

#### WATER INDUSTRY

### CHAPTER 3

#### REGULATION OF THE WATER INDUSTRY

*Regulation of relevant undertakers, water supply licensees and sewerage licensees*

#### **31 Interim duty: water supply**

For section 63AC of the Water Industry Act 1991 (interim duty of water undertaker: domestic and non-domestic supply) there is substituted—

**“63AC Interim duty: domestic and non-domestic supply**

- (1) This section applies where—
- (a) a water supply licensee (“the previous licensee”) ceases to supply any premises with water, and
  - (b) the owner or occupier of the premises has not notified the water undertaker in whose area the premises are that—
    - (i) he has made arrangements for the continuation of the supply of water to the premises, or
    - (ii) he intends any supply of water to the premises to cease.
- (2) It is to be the duty of the water undertaker to continue the supply of water to the premises which was made by the previous licensee.

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- (3) But the Authority may give a direction to an eligible water supply licensee (an “interim licensee”) providing that it is to be the duty of that licensee to continue the supply instead.
- (4) An “eligible water supply licensee” is a water supply licensee with a retail authorisation or a restricted retail authorisation who has elected to be an eligible water supply licensee for the purposes of this section in accordance with the code issued under section 63AF.
- (5) If the Authority proposes to give a direction under subsection (3) to an eligible water supply licensee—
  - (a) the Authority must give notice of the proposed direction to the licensee, and
  - (b) the licensee may, in accordance with the code issued under section 63AF, temporarily suspend the election made by the licensee as mentioned in subsection (4), so that the proposed direction cannot be given to the licensee.
- (6) Where a supply is made by an undertaker under subsection (2)—
  - (a) the charges payable in respect of the supply are to be fixed from time to time by a charges scheme under section 143, and
  - (b) subject to subsection (12), the supply is to be made until—
    - (i) a supply is made by an interim licensee by virtue of a direction under subsection (3),
    - (ii) a supply is made by a water supply licensee following the service of a notice under section 63AA or 63AB;
    - (iii) a supply is made under section 52 or 55, or
    - (iv) a notice is served by the undertaker on the owner or occupier of the premises stating that the supply is to be discontinued (subject to subsection (8)),
 whichever is the earlier.
- (7) Where a supply is made by an interim licensee by virtue of a direction given under subsection (3)—
  - (a) the supply by the interim licensee is to be treated as having begun on the date on which the previous licensee ceased to supply the premises,
  - (b) the terms and conditions in accordance with which the supply is to be made are to be—
    - (i) those provided for by a scheme made under section 63AE, or
    - (ii) such other terms and conditions as may be agreed between the interim licensee and the owner or occupier of the premises, and
  - (c) subject to subsection (12), the supply is to be made until it is discontinued in accordance with the terms and conditions mentioned in paragraph (b).
- (8) A notice under subsection (6)(b)(iv) may not be served before the end of the period of three months beginning with the day on which the supply by the previous licensee ceased.
- (9) Subsections (10) and (11) apply if, within a period of three months beginning with the date on which the previous licensee ceased to supply the premises with water, the owner or occupier of the premises serves notice—

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- (a) under section 63AA or 63AB, on the water undertaker continuing the supply under subsection (2), or
  - (b) in accordance with the terms and conditions mentioned in subsection (7)(b), on the interim licensee continuing the supply by virtue of a direction given under subsection (3),
- that instead another water supply licensee (“the new licensee”) is to continue the supply of water to the premises which was made by the previous licensee.
- (10) The notice must—
    - (a) specify the time from which the new licensee is to continue the supply in question, and
    - (b) be served in accordance with the code issued under section 63AF.
  - (11) In the case of a notice served as mentioned in subsection (9)(a), the supply by the new licensee is to be treated as having begun on the date on which the previous licensee ceased to supply the premises.
  - (12) Supplies of water under this section are subject to sections 60 to 63.

#### **63AD Interim duty: supplementary**

- (1) A water undertaker is not required by virtue of section 63AC to provide a supply of water to any premises if the provision of the supply would—
  - (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (2) The Authority may determine, in a case referred to it by the owner or occupier of the premises in question, whether the condition in subsection (1) is satisfied in relation to a water undertaker.
- (3) Before the Authority determines whether that condition is satisfied, it must consult—
  - (a) the Secretary of State, in the case of a water undertaker whose area is wholly or mainly in England;
  - (b) the Welsh Ministers, in the case of a water undertaker whose area is wholly or mainly in Wales.
- (4) The supply of water to any premises by a water undertaker under section 63AC does not prevent a proposed supply to those premises by that undertaker under section 55 from being regarded as a new supply for the purposes of that section.
- (5) Where a duty is imposed by section 63AC(2), or by virtue of a direction given under section 63AC(3), in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage is actionable at the suit of that owner or occupier.
- (6) But in any proceedings brought against a water undertaker or water supply licensee in pursuance of subsection (5), it is a defence for the undertaker or

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licensee to show that the undertaker or, as the case may be, the licensee took all reasonable steps and exercised all due diligence to avoid the breach.

- (7) For the purposes of section 63AC, premises which are outside a water undertaker's area are to be treated as being within that area if they are supplied with water using the undertaker's supply system.
- (8) In subsection (7), the reference to the undertaker's supply system is to be construed in accordance with section 17B.

### **63AE Interim licensees: schemes for terms and conditions**

- (1) A person who is an eligible water supply licensee for the purposes of section 63AC must make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to a supply of water made by the licensee by virtue of a direction given under section 63AC(3).
- (2) A scheme under this section may make different provision for different purposes, or for different areas.
- (3) As soon as practicable after a water supply licensee makes or revises a scheme under this section the licensee is to—
  - (a) publish the scheme, or revised scheme, on the licensee's website, and
  - (b) send a copy of the scheme, or revised scheme, to the Authority.
- (4) The Authority may give a direction that terms and conditions applying to a supply of water in accordance with a scheme under this section must be modified as specified in the direction.
- (5) A direction under subsection (4) may apply—
  - (a) generally to terms and conditions applying in accordance with a scheme under this section, or
  - (b) to terms and conditions so applying in any particular case.
- (6) It is the duty of a water supply licensee to comply with a direction under subsection (4), and this duty is enforceable under section 18.

### **63AF Interim duty: code**

- (1) The Authority must issue a code in relation to—
  - (a) supplies of water under section 63AC, and
  - (b) its power of direction under section 63AC(3) (power to direct that eligible water supply licensee makes interim supply).
- (2) The code may, in particular, make provision about—
  - (a) the procedure for electing to be an eligible water supply licensee for the purposes of section 63AC;
  - (b) the procedure for temporarily suspending such an election under section 63AC(5)(b);
  - (c) the circumstances in which the Authority's power of direction under section 63AC(3) or 63AE(4) may or may not be exercised;

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- (d) how the Authority will determine the date on which a water supply licensee ceased to supply premises with water for the purposes of section 63AC;
  - (e) terms and conditions contained in schemes made under section 63AE;
  - (f) eligible water supply licensees informing owners or occupiers of premises of their schemes for terms and conditions made under section 63AE, before agreeing any terms and conditions as mentioned in section 63AC(7)(b)(ii);
  - (g) the giving of notices as mentioned in section 63AC(9) (that a new licensee is to continue the supply of water made by the previous licensee) including, in particular, provision about—
    - (i) the earliest time that a notice may specify as the time from which a new licensee is to continue the supply of water made by a previous licensee;
    - (ii) the procedure for serving a notice.
- (3) If the Authority considers that a water supply licensee is not acting as required by provision contained in the code as mentioned in subsection (2)(e) or (f), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a water supply licensee to comply with a direction under subsection (3), and this duty is enforceable under section 18.
- (5) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (6) References in section 63AC to the code issued under this section are to the code issued under this section that has effect at the time in question.”

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**Commencement Information**

**II** S. 31 in force at 1.4.2017 by S.I. 2017/462, art. 3(f)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2017/1288, art. 3(c)(d) by [S.I. 2019/706 art. 2](#)
- specified provision(s) amendment to earlier commencing S.I. 2017/462, arts. 4, 5 by [S.I. 2017/926 art. 2](#)