



# Water Act 2014

## 2014 CHAPTER 21

### PART 1

#### WATER INDUSTRY

### CHAPTER 3

#### REGULATION OF THE WATER INDUSTRY

##### *Appeals relating to codes*

#### **37 Appeals relating to revisions of codes**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) After section 207 there is inserted—

### “PART 7A

#### FURTHER PROVISION ABOUT REGULATION

##### *Appeals relating to revisions of codes*

#### **207A Appeals to the CMA**

- (1) The Secretary of State may by regulations provide for an appeal to lie to the CMA from—
  - (a) a decision by the Authority to make a revision to a designated code;
  - (b) a decision by the Authority, following consultation under this Act about a proposed revision to a designated code, not to make the proposed revision.

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*Status: This is the original version (as it was originally enacted).*

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- (2) For the purposes of this section a designated code is a code, or a part of a code, issued by the Authority under or by virtue of this Act that is designated for the purposes of this section by regulations under this section.
- (3) The regulations may specify descriptions of revisions by reference to which an appeal under the regulations may not be brought.
- (4) Regulations made under subsection (3) may provide—
  - (a) for the exclusion of certain descriptions of revisions to operate only in such cases as may be determined in accordance with the regulations;
  - (b) for a determination in accordance with the regulations to be made—
    - (i) by such persons,
    - (ii) in accordance with such procedures, and
    - (iii) by reference to such matters and the opinions of such persons (including the Authority),
 as may be provided for in the regulations.
- (5) The regulations may—
  - (a) specify the persons or descriptions of persons eligible to bring an appeal;
  - (b) specify conditions to be satisfied by a person wishing to bring an appeal.
- (6) Regulations made under subsection (5) may—
  - (a) make different provision in relation to different codes or different parts of a code;
  - (b) provide for a representative body or association to bring an appeal.
- (7) The regulations must—
  - (a) provide for appeals to be brought only where the CMA grants permission for an appeal;
  - (b) provide for the grounds on which the CMA may refuse permission.
- (8) Before making regulations under this section the Secretary of State must consult—
  - (a) the Welsh Ministers;
  - (b) the Authority;
  - (c) such other persons as the Secretary of State considers appropriate.

### **207B Procedure on appeals**

- (1) Except where otherwise provided, the functions of the CMA with respect to appeals under section 207A are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- (2) Schedule 16 (provision as to procedure on appeals) has effect.

### **207C Determination of appeals**

- (1) The Secretary of State may by regulations provide for the determination by the CMA of an appeal under section 207A.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The regulations must require the CMA in determining the appeal to have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard in exercising or performing the powers and duties mentioned in section 2(1).
- (3) The regulations must provide that the CMA in determining the appeal—
  - (a) may have regard to any matter to which the Authority was not able to have regard in the case of the decision appealed against, but
  - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in that case had it had the opportunity of doing so.
- (4) The regulations may specify the grounds on which an appeal may be allowed.
- (5) The grounds specified by the regulations may include the following—
  - (a) that the Authority failed properly to have regard to the matters mentioned in subsection (2);
  - (b) that the Authority failed properly to have regard to the purposes for which the code in question is issued;
  - (c) that the Authority failed to give the appropriate weight to one or more of those matters or purposes.
- (6) The regulations may make provision for the steps that the CMA is to take—
  - (a) if it allows the appeal;
  - (b) if it does not allow the appeal.
- (7) Provision under subsection (6)(a) may include remitting a matter to the Authority for reconsideration and redetermination in accordance with directions given by the CMA.
- (8) The regulations may make provision as to the decision of the CMA on the appeal, including in particular provision for the decision—
  - (a) to be contained in an order made by the CMA;
  - (b) to set out the reasons for the decision;
  - (c) to take effect—
    - (i) at the time specified in the order, or
    - (ii) at the time determined in accordance with provision set out in the order;
  - (d) to be notified to the persons who were parties to the appeal (see paragraph 2 of Schedule 16); and
  - (e) to be published.
- (9) Provision under subsection (8)(e) may allow the CMA to exclude from publication any information which it is satisfied is—
  - (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
  - (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.”

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- (3) In section 213 (powers to make regulations), in subsection (1A) (affirmative resolution procedure to apply on first exercise of power), for “each of sections 89 and 90 above, the instrument” there is substituted “—
- (a) each of sections 89 and 90, and
  - (b) each of sections 207A and 207C and Schedule 16;
- the instrument”.
- (4) After Schedule 15 there is inserted the Schedule set out in Schedule 6 to this Act.