



# 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—

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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 in force at 1.4.2019 for W. in so far as not already in force by S.I. 2017/1288, **art. 3(a)**
- I2** 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)
- I3** S. 8(1) in force at 1.11.2016 for specified purposes by S.I. 2016/1007, **art. 2(b)**
- I4** S. 8(1)(2) in force at 1.4.2018 for specified purposes for E. by S.I. 2018/397, **art. 2(a)**
- I5** 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)

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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](#)