
STATUTORY INSTRUMENTS

2004 No. 641 (C.24)

WATER, ENGLAND AND WALES

The Water Act 2003 (Commencement No. 1 and Transitional Provisions) Order 2004

Made - - - - 8th March 2004

The Secretary of State, in exercise of the powers conferred upon her by sections 104(6)(a) and 105(3) to (6) of the Water Act 2003⁽¹⁾ and having consulted the National Assembly for Wales⁽²⁾, hereby makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Water Act 2003 (Commencement No. 1 and Transitional Provisions) Order 2004.

(2) In this Order—

“the Act” means the Water Act 2003; and

“the Authority” means the Water Services Regulation Authority.

(3) Unless the contrary intention appears, any reference in this Order to a section or Schedule is a reference to a section of or a Schedule to the Act.

Provisions coming into force on 17th March 2004

2. The following provisions of the Act shall come into force on 17th March 2004—

(a) section 69 (grants for drainage works and flood warning systems), in so far as it applies in relation to England⁽³⁾;

(b) in section 100 (devolution: Wales)—

(i) subsection (6), in so far as it relates to references to provisions amended by any provision of the Act which comes into force by virtue of this article; and

(1) 2003 c. 37.

(2) The power in section 105(3) to appoint a day on which provisions of the Water Act 2003 shall come into force is vested in the “appropriate authority”. The appropriate authority in relation to provisions of the Act for which a day is appointed by this Order (except sections 69 and 75) is the Secretary of State after consulting “the Assembly” (the National Assembly for Wales: section 105(2)); the appropriate authority in relation to sections 69 and 75 is the Secretary of State in relation to England and the Assembly in relation to Wales (section 105(5) and (6)).

(3) The day appointed on which section 69 comes into force as it applies in relation to Wales is 1st April 2004 (the Water Act 2003 (Commencement) (Wales) Order 2004, S.I. 2004/910 (W. 93) (C. 39)).

- (ii) subsection (7), in so far as it relates to subsection (6) so far as brought into force by virtue of sub-paragraph (i);
- (c) section 101(1) (minor and consequential amendments and repeals), in so far as it relates to the amendment made by paragraph 42 of Schedule 7; and
- (d) section 101(2), in so far as it relates to the following repeals specified in Schedule 9—
 - (i) the repeal of sections 147 to 149, and the repeal in relation to section 221(1), of the WRA(4); and
 - (ii) the repeal of section 101(1) of the Environment Act 1995(5).

Provisions coming into force on 1st April 2004

3. The following provisions of the Act shall come into force on 1st April 2004—
- (a) section 6(1) (rights to abstract small quantities), in so far as it inserts into the WRA section 27A (variation of small quantity threshold);
 - (b) section 9 (power to provide for further exemptions);
 - (c) in section 10 (orders under section 33 of the WRA, etc), subsection (11);
 - (d) section 15 (general consideration of licence applications);
 - (e) section 16 (protection from derogation), except the amendments made by subsections (4) and (5);
 - (f) section 18 (register of certain protected rights);
 - (g) in section 19, subsection (4), and section 20 (form, contents and effect of licences);
 - (h) in section 25 (compensation for modification of licence on direction of the Secretary of State), subsection (1), in so far as it relates to subsection (2), and subsections (2) and (4);
 - (i) section 27 (withdrawal of compensation for certain revocations and variations);
 - (j) section 37 (conditions relating to costs of water regulation);
 - (k) section 53 (specialist members of the Competition Commission);
 - (l) section 56 (licensing of water suppliers), but—
 - (i) in its application to paragraphs 2 and 4 of Schedule 4, only in so far as the paragraph in question has effect for the purpose of inserting into the WIA such provisions as are specified in relation to that paragraph in the second column of the table in Schedule 1 to this Order and, where in relation to any such provision any purpose is specified in the corresponding entry in the third column to that table, only in so far as the provision has effect for the specified purpose(6);
 - (ii) in its application to paragraph 1 of Schedule 4, only for the purposes of giving effect to paragraphs 2 and 4 of that Schedule to the extent specified in sub-paragraph (i);
 - (m) section 57 (the Chief Inspector of Drinking Water and the Drinking Water Inspectorate);
 - (n) sections 60 and 61 (penalties);
 - (o) section 64 (drought orders and drought permits: charges);
 - (p) section 65 (drought orders: procedure at local inquiries);
 - (q) sections 66 and 68 (land drainage and flood defence);
 - (r) section 71 (extension of Environment Agency’s powers of entry under the WRA);

(4) “The WRA” means the Water Resources Act 1991 (c. 57) (section 105(2) of the Act).

(5) 1995 c. 25.

(6) “The WIA” means the Water Industry Act 1991 (c. 56) (section 105(2) of the Act).

- (s) section 72 (efficient use of water resources);
- (t) section 75 (extension of enforcement authority's reserve powers under the Reservoirs Act 1975), in so far as it applies in relation to England⁽⁷⁾;
- (u) sections 81 to 83 (water conservation);
- (v) section 84 (fire hydrants);
- (w) section 85 (control of water from coal mines);
- (x) in section 100 (devolution: Wales)—
 - (i) subsection (2)(a)(ii), (iv) and (ix), b(iv), (viii) and (x), (d), (e), (f), (i) and (j), in so far as they relate to provisions brought into force by virtue of this Order;
 - (ii) subsection (4)(b)(i) and (ii);
 - (iii) subsection (5);
 - (iv) subsection (6), in so far as it relates to references to provisions amended by any provision of the Act which comes into force by virtue of this article or by virtue of the Water Act 2003 (Commencement) (Wales) Order 2004⁽⁸⁾; and
 - (v) subsection (7), in so far as it relates to subsection (6) (so far as brought into force by virtue of sub-paragraph (iv)) or the amendments made by subsections (2), (4) and (5) (so far as brought into force by sub-paragraphs (i) to (iii));
- (y) section 101(1) (minor and consequential amendments and repeals), in so far as it relates to the amendments made by the provisions of Schedules 7 and 8 specified in Schedule 2 to this Order; and
- (z) section 101(2), in so far as it relates to the following repeals specified in Schedule 9—
 - (i) the repeal of section 14(8) and (8A), and the repeal in relation to section 86(1), of the WIA;
 - (ii) the repeal of sections 33, 77(4) and 79A(8) of the WRA;
 - (iii) the repeal in relation to section 104(1) of the Utilities Act 2000⁽⁹⁾;
 - (iv) the repeal of section 1 of the Metropolis Water Act 1852⁽¹⁰⁾;
 - (v) the repeals in relation to Schedule 4 to the Environment Act 1995;
 - (vi) the repeal in relation to Schedule 7 and the repeal of paragraph 13(3) of Schedule 10 to the Competition Act 1998⁽¹¹⁾; and
 - (vii) the repeal in relation to the references in the National Assembly for Wales (Transfer of Functions) Order 1999⁽¹²⁾ to sections 68 to 70 of the WIA, in so far as they relate to provisions brought into force by this Order.

Provisions coming into force on 28th May 2004

- 4.** The following provisions of the Act shall come into force on 28th May 2004—
- (a) sections 90 to 92 (water mains, etc);
 - (b) sections 93 to 97, and 99 (sewers and drains);
 - (c) in section 100 (devolution: Wales)—

⁽⁷⁾ 1975 c. 23. Equivalent provision in relation to Wales is made by the Water Act 2003 (Commencement) (Wales) Order 2004 (S.I. 2004/910 (W. 93) (C. 39)).

⁽⁸⁾ S.I. 2004/910 (W. 93) (C. 39).

⁽⁹⁾ 2000 c. 27.

⁽¹⁰⁾ 1852 c. 84.

⁽¹¹⁾ 1998 c. 41.

⁽¹²⁾ S.I. 1999/672.

- (i) subsection (2)(b)(iii);
- (ii) subsection (6), in so far as it relates to references to provisions amended by any provision of the Act which comes into force by virtue of this article; and
- (iii) subsection (7), in so far as it relates to subsection (6) (so far as brought into force by virtue of sub-paragraph (ii)) or the amendment made by subsection (2)(b)(iii); and
- (d) section 101(2), in so far as it relates to the following repeals specified in Schedule 9—
 - (i) the repeals in relation to sections 98(5), 101A(2), 102(1)(a) and 103(1)(a) of the WIA; and
 - (ii) the repeal of section 104(6) of the WIA.

Provisions coming into force on 1st April 2005

5. Section 24 (claims arising out of water abstraction) shall come into force on 1st April 2005.

Transitional provisions

- 6.—(1) The transitional provisions in Schedule 3 to this Order shall have effect.
- (2) Paragraph (1) shall come into force—
- (a) so far as it relates to paragraph 4 of Schedule 3 to this Order, on 1st April 2005; and
 - (b) otherwise, on 1st April 2004.

8th March 2004

Elliot Morley
Minister of State,
Department for Environment, Food and Rural
Affairs

SCHEDULE 1

Article 3(1)

LICENSING OF WATER SUPPLIERS: PROVISIONS
COMING INTO FORCE ON 1ST APRIL 2004

<i>Paragraph of Schedule 4</i>	<i>Provisions inserted into the WIA</i>	<i>Relevant purposes</i>
Paragraph 2	Section 17A(1) and (2), and (4) to (6)	The purpose of enabling the Secretary of State to give a general authorisation to the Authority.
	Section 17A(3)	The purposes of enabling the Authority to issue guidance under sections 17A(9) and 17D(3) and of enabling the Secretary of State and the Assembly to make regulations under section 17C(3) and (4).
	Section 17A(9) and (10)	
	Section 17B	
	Section 17C	
	Section 17D(1) to (7)	
	Section 17D(12)	The purpose of enabling the Secretary of State to make regulations under section 17D(7).
	Section 17F(1) to (3)	The purposes of enabling the Secretary of State to make regulations under section 17F(1) to (3), and (5).
	Section 17F(5)	
	Section 17G	The purpose of enabling the Secretary of State to determine standard licence conditions pursuant to section 17H.
Paragraph 3	Section 17H(1) to (4)	
	Section 17J(6) to (7), and (9) to (11)	The purpose of enabling the Secretary of State to make an order under section 17J(6).
	Section 66A(6)	The purpose of enabling the Secretary of State to make regulations prescribing which requirements of regulations under section 74 are relevant.
	Section 66B(8) to (10), and (12)	

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<i>Paragraph of Schedule 4</i>	<i>Provisions inserted into the WIA</i>	<i>Relevant purposes</i>
	Section 66D(4) to (6)	
	Section 66E	
	Section 66F(5) to (8)	
	Section 66I(3)	
	Section 66I(8)	The purpose of enabling the Secretary of State and the Assembly to make regulations under section 66I(3).
	Section 66J(3)	
	Section 66J(9)	The purpose of enabling the Secretary of State and the Assembly to make regulations under section 66J(3).
	Section 66K	
	Section 66L	

SCHEDULE 2

Article 3(y)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS:
PROVISIONS COMING INTO FORCE ON 1ST APRIL 2004

<i>Schedule</i>	<i>Provision</i>
Schedule 7	<p>Paragraphs 6, 14, 31, 37 and 40, and paragraph 1 in so far as it relates to those paragraphs.</p> <p>Paragraphs 23, 24, 33, 34 and 35, in so far as each of those paragraphs relates to the amendments made by its sub-paragraph (b).</p> <p>In paragraph 26, sub-paragraphs (2)(a)(i)(b) and (iii), and sub-paragraph (1) in so far as it relates to those sub-paragraphs.</p> <p>In paragraph 27, sub-paragraphs (5)(a)(ii), (iii) and (v), (5)(b)(ii) and (7)(a), and sub-paragraph (1) in so far as it relates to those sub-paragraphs.</p> <p>In paragraph 28, sub-paragraphs (3)(a)(ii), (iii) and (v), and (3)(b)(iii), and sub-paragraph (1) in so far as it relates to those sub-paragraphs.</p> <p>In paragraph 32, sub-paragraph (3) and sub-paragraph (4)(b) (in so far as the latter relates</p>

<i>Schedule</i>	<i>Provision</i>
Schedule 8	<p>to paragraph 13(3) of Schedule 10 to the Competition Act 1998), and sub-paragraph (1) in so far as it relates to sub-paragraphs (3) and (4)(b) so far as commenced by this paragraph.</p> <p>In paragraph 36, sub-paragraph (4), and sub-paragraph (1) in so far as it relates to that sub-paragraph.</p> <p>In paragraph 1, sub-paragraph (4), and sub-paragraph (1) in so far as it relates to that sub-paragraph.</p> <p>Paragraphs 19, 23, 43, 44 and 48, and paragraph 2 in so far as it relates to those paragraphs.</p> <p>In paragraph 47, sub-paragraph (4), and sub-paragraph (1) and paragraph 2 in so far as they relate to sub-paragraph (4).</p> <p>In paragraph 49, sub-paragraph (3), and sub-paragraph (1) and paragraph 2 in so far as they relate to sub-paragraph (3).</p> <p>Paragraph 50, in so far as the definitions it amends have effect for the purposes of the provisions of the WIA amended or introduced by virtue of a provision brought into force by this Order, and paragraph 2 in so far as it relates to that paragraph.</p> <p>In paragraph 53, sub-paragraph (3)(c), and sub-paragraph (1) in so far as it relates to that sub-paragraph.</p>

SCHEDULE 3

Article 6

TRANSITIONAL PROVISIONS

1.—(1) Until the relevant day, sections 27A (variation of small quantity threshold) and 33A (power to provide for further exemptions) of the WRA, as inserted by sections 6 and 9 respectively, shall have effect as if—

- (a) all of the provisions of section 6(1) (rights to abstract small quantities) were in force; and
- (b) those sections did not enable an order or regulations to be made so as to come into force before the relevant day.

(2) In this paragraph, “the relevant day” means the first day on which all of the provisions of section 6(1) are in force.

2. Until the coming fully into force of section 1 (licences to abstract water), sections 38(1A) (general consideration of licence applications) and 46A (limited extension of abstraction licence validity) of the WRA, as inserted by sections 15 and 20 respectively, shall have effect as if—

- (a) any reference to a “full licence or a transfer licence” were a reference to a licence under Chapter 2 of Part 2 of the WRA;
- (b) in paragraph (a) of section 38(1A), the words “of the same type” were omitted; and
- (c) in subsection (3) of section 46A, the words “of the type in question” were omitted.

3. Until the coming fully into force of section 17 (protected rights), section 39B (register of certain protected rights) of the WRA, as inserted by section 18, shall have effect as if it did not enable regulations or an order to be made so as to come into force before that time.

4. Until the coming fully into force of section 23 (transfer and apportionment of licences), the amendments made by section 24 shall have effect as if in section 48A(7)(b) of the WRA (civil remedies for loss or damage due to water abstraction) the words “and section 59C(6) below” were omitted.

5. Any appointment as a technical assessor under section 86 of the WIA (assessors for the enforcement of water quality), or designation under subsection (4) of that section, which—

- (a) was made before the coming into force of section 57 (the Chief Inspector of Drinking Water and the Drinking Water Inspectorate); and
- (b) is still current at that time,

shall have effect as if it were an appointment as, or (as the case may be) a designation of, an inspector under section 86 of the WIA as amended by section 57.

6. A designation in writing for the purposes of section 169 of the WRA (powers of entry for enforcement purposes) which—

- (a) was made before the coming into force of section 71 (extension of Environment Agency’s powers of entry); and
- (b) is still current at that time,

shall have effect as if given for the purposes of section 169 of the WRA as amended by section 71.

7. Until the coming fully into force of section 36(1) (transfer to the Authority and the Consumer Council for Water of functions, property etc), any reference to the Authority in—

- (a) any provision of the Act which comes into force by virtue of this Order (except section 37);
- (b) any provision of the WIA which is introduced or amended by the Act and by virtue of this Order; or
- (c) Schedule 1 to this Order,

shall have effect as if it were a reference to the Director General of Water Services.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Water Act 2003, and makes transitional provision in respect of some of those provisions.

The provisions brought into force on 17th March 2004 relate to grants for drainage works and flood warning systems (section 69). They repeal sections 147 to 149 of the Water Resources Act 1991, and make consequential amendments. The power to make grants for related purposes under section 47 of the Environment Act 1995 is unaffected.

The provisions brought into force on 1st April 2004 relate to abstraction licensing, regulation of the water industry (including aspects of competition in the supply of water) and various miscellaneous matters. The abstraction licensing provisions (the provision in relation to sections 6, 9, 10, 15, 16, 18, 19, 20, 25, 27 and 60) generally allow for preparations to be made for the introduction at a later date of reforms to the abstraction licensing system. New powers enabling regulations and orders to be made are therefore brought into force in relation to the variation of the exemptions from licensing that will be introduced by section 6 (in part) and section 9, and registers of protected rights (section 18), as are some substantive changes (sections 10(11), 15, 16, 19, 20, 25, 27 and 60).

Certain provisions relating to the water industry, including the licensing of water suppliers, are also brought into force on 1st April 2004. These enable the recovery from water undertakers of the costs of establishing the new Consumer Council for Water (section 37), and bring the appointment of specialist members of the Competition Commission for references under the Water Industry Act 1991 into line with such appointments in relation to other utilities (section 53). The Secretary of State, National Assembly for Wales and Director General of Water Services are also empowered to establish the new system for licensing water suppliers by means of subordinate legislation (including determining licence conditions), changes to water undertakers' appointment conditions, and guidance (Schedule 4, introduced by section 56).

The remaining provisions brought into force on 1st April 2004 require a Chief Inspector of Drinking Water to be appointed and make related provision (section 57), increase the penalty applying on conviction of the offence of supplying water unfit for human consumption (section 61), make changes in relation to drought orders and permits (sections 64 and 65), provide power to revoke local flood defence schemes (section 66) and allow the composition of regional flood defence committees to be changed (section 68), extend enforcement authorities' powers under the Water Resources Act 1991 and the Reservoirs Act 1975 (sections 71 and 75), make provision in connection with the efficient use and conservation of water (sections 72 and 81 to 83), require water undertakers to bear certain costs of the provision of fire hydrants (section 84), and make new provision in connection with the control of water from coal mines, including in relation to compulsory purchase (section 85 and Schedules 5 and 6).

The provisions brought into force on 28th May 2004 relate to water mains, sewers and their respective connection pipes. They allow a person requisitioning a water main or sewer to pay for it by a single lump sum, and provide for the calculation of that sum (sections 90, 91 and 93), and make provision for agreements to enable the adoption by water undertakers of water mains and service pipes laid by other people (section 92), and for the requisitioning and adoption of lateral drains (sections 95 to 97, and 99).

The provisions brought into force on 1st April 2005 provide for a right of civil action generally to lie against a person who, by abstracting water from inland waters or underground strata, causes loss

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or damage to another person (section 24). Such liability cannot arise in relation to loss or damage suffered before that date (section 24(3)).