



Water Industry Act 1991

1991 CHAPTER 56

PART III

WATER SUPPLY

CHAPTER IV

FLUORIDATION

Modifications etc. (not altering text)

- C1** Pt. 3 Ch. 4 modified (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 37\(1\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

[^{F1}87 Fluoridation of water supplies

- (1) If requested in writing to do so by a relevant authority, a water undertaker shall enter into arrangements with the relevant authority to increase the fluoride content of the water supplied by that undertaker to premises within the area specified in the arrangements.
- (2) But a water undertaker shall not be required by subsection (1) above to enter into any such arrangements until an indemnity with respect to the arrangements has been given by virtue of section 90 below—
 - (a) to the water undertaker; and
 - (b) to any licensed water supplier which is entitled to one.
- (3) In this section and the following provisions of this Chapter—
 - (a) references to a relevant authority—
 - [^{F2}(i) in relation to areas in England, are to the Secretary of State;]
 - (ii) in relation to areas in Wales, are to the Assembly; and

Status: Point in time view as at 01/04/2013.

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- (b) references to water supplied by a water undertaker are to water supplied (whether by a water undertaker or a licensed water supplier) to premises using the supply system of that undertaker.
- [^{F4}(3A) The Secretary of State may make a request under subsection (1) only if the Secretary of State is required to do so by section 88G(2) (following the making of a fluoridation proposal in accordance with section 88B).]
- (4) The area specified in arrangements under this section may be—
- [^{F5}(a) in relation to England, such area as the Secretary of State considers appropriate for the purpose of complying with section 88G(2);]
- (b) in relation to Wales, such area comprising the whole or any part of Wales as the Assembly may determine.
- (5) The arrangements shall be on such terms as may be agreed between the relevant authority and the water undertaker or, in the absence of agreement, determined in accordance with section 87B below.
- (6) Those terms shall include provision—
- (a) requiring the relevant authority to meet the reasonable capital and operating costs incurred by the water undertaker in giving effect to the arrangements;
- (b) specifying circumstances in which the requirement to increase the fluoride content may be temporarily suspended; and
- (c) for the variation of the arrangements at the request of the relevant authority.
- (7) The relevant authority shall consult the Authority in relation to the terms to be included in any arrangements under this section (in particular, terms which affect the operation of the water undertaker’s supply system).
- [^{F6}(7A) The Secretary of State must, in relation to the terms to be included in any arrangements under this section, consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.
- (7B) In this section and the following provisions of this Chapter “local authority” means—
- (a) a county council in England;
- (b) a district council in England, other than a council for a district in a county for which there is a county council;
- (c) a London borough council;
- (d) the Common Council of the City of London.]
- (8) [^{F7}If two or more relevant authorities request a particular water undertaker to enter into arrangements in respect of adjoining areas—
- (a) the authorities shall co-operate with each other so as to secure that the arrangements (taken together) are operable and efficient; and
- (b) if suitable terms are not agreed for all the arrangements, a combined reference may be made by the relevant authorities under section 87B below to enable the terms of each set of arrangements to be determined so that they are consistent.]
- (9) [^{F7}If a relevant authority requests a water undertaker to vary arrangements, the authority shall co-operate with any relevant authority for an adjoining area which has entered into arrangements with the same water undertaker so as to secure that following the variation the arrangements (taken together) will be operable and efficient.]

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- (10) ^{F7}If suitable terms are not agreed for a variation mentioned in subsection (9), a combined reference may be made by the relevant authorities under section 87B below to enable the terms of the variation to be determined so that (following the variation) both sets of arrangements are consistent.]
- (11) Before carrying out the consultation required by subsection (1) of section 89 below in relation to a step mentioned in paragraph (a), (b) or (c) of subsection (2) of that section, ^{F8}a relevant authority^{F8}the Welsh Ministers] shall consult the water undertaker in question as to whether the arrangements which would result from taking that step would be operable and efficient (or, where it is proposed to terminate the arrangements, as to whether it would be reasonably practicable to do so).]

Textual Amendments

- F1** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)
- F2** S. 87(3)(a)(i) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(2)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F3** Words in s. 87(3)(a)(i) substituted (1.3.2007) by virtue of [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), **ss. 2, 8(2)**, **Sch. 1 para. 138**
- F4** S. 87(3A) inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(3)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F5** S. 87(4)(a) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(4)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F6** S. 87(7A)(7B) inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(5)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F7** S. 87(8)-(10) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(7)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F8** Words in s. 87(11) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(8)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Modifications etc. (not altering text)

- C2** S. 87: functions not to be exercised by a primary care trust (1.4.2000) by virtue of [S.I. 2000/695](#), **art. 4(1)**, **Sch. 4**

^{F9}87A Target concentration of fluoride

- (1) Arrangements under section 87(1) above shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.
- (2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if the relevant authority considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).
- (3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.

[If the Secretary of State proposes to—

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- ^{F10}(3A) (a) make arrangements which provide for the concentration in the specified area (or any part of it) to be lower than the general target concentration, or
- (b) vary existing arrangements so that they so provide,
- the Secretary of State shall consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.]
- (4) If, in relation to any area (“area A”), an order under section 88A(1) below specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this subsection, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of subsections (2) and (3) above).
- (5) If the result of the operation of subsection (4) above in relation to arrangements in area A is that in an area adjoining area A (“area B”) it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and subsection (4) above shall apply accordingly.
- (6) An order under section 88A(1) below which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of subsection (4) or (5) above) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).
- (7) In this section, “specified area” means the area specified in arrangements under section 87(1) above.]

Textual Amendments

- F9** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)
- F10** S. 87A(3A) inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(9)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with **arts. 7-9**)

^{F11}87B Fluoridation arrangements: determination of terms

- (1) This section applies if a relevant authority and a water undertaker fail to agree—
- (a) the terms of arrangements requested by the relevant authority pursuant to subsection (1) of section 87 above; or
- (b) a variation in the terms of those arrangements following a request by the relevant authority pursuant to subsection (6)(c) of that section.
- (2) In relation to areas in England (except where subsection (4) below applies)—
- [the Secretary of State may—
- ^{F12}(a) (i) determine the terms of the arrangements as the Secretary of State sees fit; or
- (ii) refer the matter for determination by such other person as the Secretary of State considers appropriate; and” and]
- (b) [^{F13} following such a reference, the Secretary of State may—

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- (i) determine the terms of the arrangements as he sees fit; or
 - (ii) refer the matter for determination by such other person as he considers appropriate; and]
 - (c) the determination of the Secretary of State or, as the case may be, the other person shall be final.
- (3) In relation to areas in Wales (except where subsection (4) below applies)—
 - (a) the Assembly may—
 - (i) determine the terms of the arrangements itself as it sees fit; or
 - (ii) refer the matter for determination by such other person as it considers appropriate; and
 - (b) the determination of the Assembly or, as the case may be, the other person shall be final.
- (4) [^{F14}Where the Assembly is one of the relevant authorities which has made a combined reference under section 87(8)(b) or (10)] [^{F14}Where a combined reference is made under section 87(7C)(b) or 87(7F)] above—
 - (a) the terms of the arrangements shall be determined by a person appointed by the Secretary of State and the Assembly acting jointly; and
 - (b) the determination of that person shall be final.
- (5) Following determination under this section of the terms to be included in any arrangements—
 - (a) the relevant authority shall give notice of the determination to the water undertaker in question; and
 - (b) the undertaker shall be deemed to have entered into the arrangements under section 87(1) above on the terms determined under this section with effect from the day after the date of the notice.
- (6) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements deemed to have been entered into under that section by virtue of subsection (5)(b) above.]

Textual Amendments

- F11** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), **ss. 58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)
- F12** S. 87B(2)(a) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(10)(a)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F13** S. 87B(2)(b) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(10)(b)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)
- F14** Words in s. 87B(4) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 35(11)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

[^{F15}87C Fluoridation arrangements: compliance

- (1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under section 87(1) above.

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- (2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—
hexafluorosilicic acid (H₂SiF₆)
disodium hexafluorosilicate (Na₂SiF₆).
- (3) Subject to subsection (4) below, water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under section 87(1) above).
- (4) Subsection (3) above applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—
(a) for the purpose of dealing with any serious deficiency in supply; or
(b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned, or by a licensed water supplier supplying water using its or their supply system.
- (5) In this section—
(a) the reference, in subsection (3) above, to water to which fluoride has been added pursuant to arrangements includes a reference to water to which fluoride has been added by Scottish Water in exercise of the power conferred by section 1 of the Water (Fluoridation) Act 1985; and
(b) in relation to a supply of such water by a water undertaker, the reference, in subsection (4) above, to the water undertakers concerned shall have effect as references to the water undertaker and Scottish Water.
- (6) In subsection (4) above, “serious deficiency in supply” means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.
- (7) Arrangements entered into under section 87(1) above shall remain in force until the relevant authority, after giving reasonable notice to the water undertaker, terminates them.
- (8) [^{F16}But (except where it is reasonably practicable to terminate the arrangements separately), arrangements to which section 87(8)(a) or (b) applied may only be terminated by the relevant authorities acting jointly.]]

Textual Amendments

- F15** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), ss. **58(2)(11)-(14)**, 105(3); S.I. 2008/1922, **art. 2(a)**; S.I. 2009/359, **art. 2**, (with saving in art. 3, Sch. 3)
- F16** S. 87C(8) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. **35(12)**, 306(2)(3); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

88 Power to vary permitted fluoridation agents.

- (1) The Secretary of State may by order amend section [^{F17}87C(2)] above by—

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- (a) adding a reference to another compound of fluorine; or
 - (b) removing any reference to a compound of fluorine.
- (2) The power of the Secretary of State to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F17 Words in s. 88(1) substituted (25.2.2009 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(3)**, 105(3); S.I. 2009/359, arts. 2, 3, [Sch.](#)

[^{F18}88A Power to vary target concentration of fluoride

- (1) The appropriate authority may by order made by statutory instrument provide that section 87A(1) above is to have effect as if for “one milligram per litre” there were substituted a lower concentration specified in the order.
- (2) An order under subsection (1) above may make different provision for different geographical areas, or for some such areas and not others.
- (3) A statutory instrument containing an order under subsection (1) above shall not be made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) In subsection (1) above “appropriate authority”—
 - (a) in relation to an area which is partly in England and partly in Wales, means the Secretary of State and the Assembly acting jointly;
 - (b) in relation to an area which is wholly in England, means the Secretary of State; and
 - (c) in relation to an area which is wholly in Wales, means the Assembly.
- (5) An order amending or revoking an order under subsection (1) above made by virtue of subsection (4)(a) above must also be made by the Secretary of State and the Assembly acting jointly.]

Textual Amendments

F18 [S. 88A](#) inserted (25.2.2009 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(4)**, 105(3); S.I. 2009/359, **art. 2(b)** (with saving in [art. 3](#), [Sch.](#))

[^{F19}88B Requirement for fluoridation proposal: England

- (1) The Secretary of State may not request a water undertaker to enter into arrangements under section 87(1) unless a fluoridation proposal is made to the Secretary of State.
- (2) A fluoridation proposal is a proposal that the Secretary of State enter into arrangements with one or more water undertakers to increase the fluoride content of the water supplied by the undertaker or undertakers to premises within such area or areas in England as may be specified in the proposal.

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- (3) A fluoridation proposal may be made by one or more local authorities in England.
- (4) A local authority may not make a fluoridation proposal unless its area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.
- (5) In the following provisions of this Chapter, “proposer”, in relation to a fluoridation proposal, means the local authority or authorities which made the proposal.
- (6) Any reference in the following provisions of this Chapter to a local authority affected by a fluoridation proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

88C Initial consultation etc. on fluoridation proposal

- (1) This section applies if a fluoridation proposal is made.
- (2) The proposer must consult the Secretary of State as to whether the arrangements which would result from implementing the proposal would be operable and efficient.
- (3) The proposer must consult each water undertaker who supplies water to premises within the area or areas specified in the proposal as to whether the arrangements which would result from implementing the proposal, insofar as they might affect the undertaker, would be operable and efficient.
- (4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.
- (5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (3).
- (6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements would not be operable and efficient, no further steps may be taken in relation to the proposal.

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

88D Additional requirements where other local authorities affected

- (1) This section applies where—
 - (a) a fluoridation proposal is made,

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- (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,
 - (c) one or more local authorities other than the proposer are affected by the proposal, and
 - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must notify any other local authority which is affected by the proposal.
- (3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.
- (4) The Secretary of State must by regulations—
- (a) make provision as to the arrangements which must be made for the purposes of subsection (3), and
 - (b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36, 306(1)(d)(2)(3)** (with s. 37(3)); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

88E Decision on fluoridation proposal

- (1) This section applies where—
- (a) a fluoridation proposal is made,
 - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,
 - (c) in a case where section 88D applies, the conditions prescribed under subsection (4)(b) of that section are satisfied, and
 - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.
- (3) The proposer may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.
- (4) But the proposal may not be modified so as to extend the boundary of any area to which it relates, or to add another area, except in circumstances prescribed in regulations by the Secretary of State.
- (5) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to make such requests under section 87(1) as are necessary to implement the proposal.
- (6) The Secretary of State may by regulations make provision—
- (a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (5);

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- (b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (5).

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

88F Decision-making procedure: exercise of functions by committee

- (1) This section applies in relation to the exercise of functions under or by virtue of section 88E(2) to (5) (“the fluoridation functions”) except where the proposer is a single local authority and either—
- (a) no other local authorities are affected by the proposal, or
 - (b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the fluoridation functions.
- (2) The local authorities affected by the proposal must—
- (a) arrange for an existing joint committee of the authorities to exercise the fluoridation functions,
 - (b) establish a joint committee of the authorities for that purpose, or
 - (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the fluoridation functions.
- (3) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the fluoridation functions.
- (4) The Secretary of State may by regulations make provision—
- (a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;
 - (b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);
 - (c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (3);
 - (d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the fluoridation functions.

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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88G Secretary of State's duty in relation to fluoridation proposal

- (1) This section applies if the Secretary of State is requested to make such requests under section 87(1) as are necessary to implement a fluoridation proposal.
- (2) The Secretary of State must comply with the request if the Secretary of State is satisfied that the requirements imposed by sections 88B to 88F have been met in relation to the proposal.
- (3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88C(2) or (3), 88D(4) or 88E(2).

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36, 306(1)(d)(2)(3)** (with [s. 37\(3\)](#)); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

88H Payments by local authorities towards fluoridation costs

- (1) This section applies where a water undertaker enters into arrangements with the Secretary of State under section 87(1).
- (2) The Secretary of State may require all local authorities affected by the arrangements to make payments to the Secretary of State to meet any costs incurred by the Secretary of State under the terms of the arrangements.
- (3) The amount to be paid by each of the affected local authorities is to be determined—
 - (a) where a joint committee, or a joint sub-committee of Health and Wellbeing Boards, has exercised the fluoridation functions of the authorities in relation to the proposal which resulted in the arrangements being made and the committee or sub-committee continues to exist at the time when the Secretary of State exercises the power conferred by subsection (2), by that committee or sub-committee;
 - (b) in any other case, by agreement between the local authorities.
- (4) If the amount to be paid by the affected local authorities is not determined as mentioned in subsection (3), the Secretary of State may—
 - (a) determine the amount to be paid, or
 - (b) refer the matter for determination by such other person as the Secretary of State considers appropriate.
- (5) The amount determined in accordance with subsection (3) may, at the request of one or more of the affected local authorities, be varied with the agreement of all of them.
- (6) If the affected local authorities fail to reach agreement for the purposes of subsection (5), the Secretary of State may—
 - (a) determine whether to vary the amount (and, if so, how), or
 - (b) refer the matter for determination by such other person as the Secretary of State considers appropriate.

Status: Point in time view as at 01/04/2013.

Changes to legislation: Water Industry Act 1991, CHAPTER IV is up to date with all changes known to be in force on or before 19 June 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)

- (7) Any reference in this section to a local authority affected by arrangements under section 87(1) is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C3 S. 88H modified (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 37(3)**, 306(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

88I Variation or termination of arrangements under section 87(1)

- (1) The Secretary of State may not request a water undertaker to vary arrangements entered into by the water undertaker under section 87(1) unless a proposal (“a variation proposal”) is made to the Secretary of State for a variation in the arrangements.
- (2) The Secretary of State may not give notice to a water undertaker under section 87C(7) to terminate arrangements entered into by the water undertaker under section 87(1) unless a proposal (“a termination proposal”) is made to the Secretary of State for the termination of the arrangements.
- (3) Subsection (1) does not apply in relation to a variation to provide for the concentration of fluoride in the area specified in the arrangements (or any part of it) to be lower than the general target concentration.
- (4) The Secretary of State may by regulations provide that subsection (1) or (2) does not apply in prescribed circumstances.
- (5) A variation or termination proposal may be made by one or more of the local authorities affected by the arrangements.
- (6) The Secretary of State may by regulations provide that, where a termination proposal is made in relation to arrangements under section 87(1), no further termination proposal may be made in relation to the arrangements until the end of such period as may be specified in the regulations.
- (7) In the following provisions of this Chapter, “proposer”, in relation to a variation or termination proposal, means the local authority or authorities which made the proposal.
- (8) Any reference in this section and in the following provisions of this Chapter to a local authority affected by a variation or termination proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.
- (9) In relation to a proposal for the variation of the area specified in arrangements under section 87(1), any reference in this section and in the following provisions of this Chapter to a local authority affected by the proposal also includes a reference to a local authority whose area would include, coincide with or be wholly or partly within the area specified in the arrangements if the variation were made.

Status: Point in time view as at 01/04/2013.

Changes to legislation: Water Industry Act 1991, CHAPTER IV is up to date with all changes known to be in force on or before 19 June 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)

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

C4 S. 88I(2) excluded (1.4.2013) by [The Water Fluoridation \(Proposals and Consultation\) \(England\) Regulations 2013 \(S.I. 2013/301\)](#), regs. 1, 16

88J Initial consultation etc. on variation or termination proposal

- (1) This section applies if a variation or termination proposal is made.
- (2) In the case of a variation proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether the arrangements as varied in accordance with the proposal would be operable and efficient.
- (3) In the case of a termination proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether it would be reasonably practicable to terminate the arrangements.
- (4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.
- (5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (2) or (3).
- (6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements as varied would not be operable and efficient or (as the case may be) that it would not be reasonably practicable to terminate the arrangements, no further steps may be taken in relation to the proposal.

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

88K Additional requirements where other local authorities affected

- (1) This section applies where—
 - (a) a variation or termination proposal is made,
 - (b) the Secretary of State is of the opinion that the arrangements as varied would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,
 - (c) one or more local authorities other than the proposer are affected by the proposal, and
 - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must notify any other local authority which is affected by the proposal.

Status: Point in time view as at 01/04/2013.

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- (3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.
- (4) The duty in subsection (3) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (5) The Secretary of State may by regulations provide that the duty in subsection (3) does not apply in prescribed circumstances.
- (6) The Secretary of State must by regulations—
 - (a) make provision as to the arrangements which must be made for the purposes of subsection (3), and
 - (b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36, 306(1)(d)(2)(3)** (with [s. 37\(3\)](#)); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

88L Decision on variation or termination proposal

- (1) This section applies where—
 - (a) a variation or termination proposal is made,
 - (b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,
 - (c) in a case where the duty in section 88K(3) applies, the conditions prescribed under subsection (6)(b) of that section are satisfied, and
 - (d) the proposer wishes to take further steps in relation to the proposal.
- (2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.
- (3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.
- (5) The proposer of a variation proposal may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.
- (6) But, except in circumstances prescribed in regulations by the Secretary of State, the proposal may not be modified so as to propose the extension of the boundary of the area specified in the arrangements or, if the proposal is that the arrangements be varied so as to extend the boundary, may not be modified so as to propose a further extension of it.

Status: Point in time view as at 01/04/2013.

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- (7) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to request the water undertaker to vary the arrangements or (as the case may be) to give notice under section 87C(7) to the water undertaker to terminate the arrangements.
- (8) The Secretary of State may by regulations may make provision—
 - (a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (7);
 - (b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (7).

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 36, 306\(1\)\(d\)\(2\)\(3\)](#) (with [s. 37\(3\)](#)); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

88M Decision-making procedure: exercise of functions by committee

- (1) This section applies in relation to the exercise of functions under or by virtue of section 88L(2) to (7) (“the relevant functions”) except where the proposer is a single local authority and either—
 - (a) no other local authorities are affected by the proposal, or
 - (b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the functions.
- (2) The local authorities affected by the proposal must—
 - (a) arrange for an existing joint committee of the authorities to exercise the relevant functions,
 - (b) establish a joint committee of the authorities for that purpose, or
 - (c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the relevant functions.
- (3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.
- (4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.
- (5) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the relevant functions.
- (6) The Secretary of State may by regulations make provision—
 - (a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;
 - (b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);

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- (c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (5);
- (d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the relevant functions.

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 36, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

88N Secretary of State's duty in relation to requests for variation or termination

- (1) This section applies if (following the making of a variation or termination proposal) the Secretary of State is requested—
 - (a) to request a variation of arrangements entered into under section 87(1), or
 - (b) (as the case may be) to give notice under section 87C(7) to a water undertaker to terminate such arrangements.
- (2) The Secretary of State must comply with the request if satisfied that the requirements imposed by sections 88I to 88M have been met in relation to the proposal.
- (3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88J(2) or (3), 88K(6) or 88L(2).

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 36, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

88O Power to make regulations as to maintenance of section 87 arrangements

- (1) The Secretary of State may by regulations prescribe circumstances in which arrangements must be made in accordance with the regulations—
 - (a) for consulting and ascertaining opinion on whether arrangements under section 87(1) (“section 87(1) arrangements”) should be maintained, and
 - (b) for enabling authorities affected by section 87(1) arrangements to decide whether to propose to the Secretary of State that they be maintained.
- (2) The regulations must make provision requiring the Secretary of State to give notice under section 87C(7) to a water undertaker to terminate section 87(1) arrangements entered into by the undertaker if—
 - (a) the outcome of arrangements made by virtue of subsection (1)(b) is that the affected authorities decide not to propose that the section 87(1) arrangements be maintained, and

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- (b) the Secretary of State is satisfied that any requirements imposed by regulations under subsection (1), as to the arrangements to be made for the purposes mentioned in that subsection, have been met.
- (3) Subsection (2)(b) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed by regulations made under subsection (1).
- (4) The provision that may be made by regulations under subsection (1) (as to the arrangements to be made for the purposes mentioned in that subsection) includes provision corresponding, or similar, to any requirements imposed by or under sections 88K to 88M.]

Textual Amendments

F19 Ss. 88B-88O inserted (27.3.2012 for specified purposes, 1.4.2013 for E. in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 36**, 306(1)(d)(2)(3) (with s. 37(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

[^{F21}89 Consultation][^{F20}:Wales]

- (1) Before taking any step mentioned in subsection (2) below, [^{F22}a relevant authority][^{F22}the Welsh Ministers] shall—
 - (a) consult and ascertain opinion in accordance with regulations made by [^{F23}the appropriate authority][^{F23}the Welsh Ministers]; and
 - (b) comply with the requirements set out in regulations made by [^{F23}the appropriate authority][^{F23}the Welsh Ministers].
- (2) The steps are—
 - (a) requesting a water undertaker to enter into arrangements under section 87(1) above;
 - (b) requesting a water undertaker to vary any such arrangements in, or except in, prescribed circumstances or cases;
 - (c) giving notice to a water undertaker under section 87C(7) above to terminate any such arrangements;
 - (d) maintaining any such arrangements in prescribed circumstances.
- (3) Regulations—
 - (a) under paragraph (a) of subsection (1) above shall include provision about the process which [^{F24}relevant authorities][^{F24}the Welsh Ministers] are to follow for the purposes of that paragraph;
 - (b) under paragraph (b) of that subsection shall include provision about the requirements which must be satisfied (with respect to the outcome of that process or otherwise) before a step mentioned in subsection (2) above may be taken.
- (4) Subsection (1) above shall not apply in relation to a proposal by [^{F25}a relevant authority][^{F25}the Welsh Ministers] to take the step mentioned in subsection (2)(c) above if [^{F26}the appropriate authority so directs][^{F26}the Welsh Ministers so direct] by an instrument in writing (and such a direction may apply either generally or in relation to a particular proposal).

Status: Point in time view as at 01/04/2013.

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- (5) ^{F27}In this section “appropriate authority”—
- (a) in a case where two or more relevant authorities (one of which is the Assembly) propose to request a particular water undertaker to take a step mentioned in subsection (2)(a), (b) or (c) in respect of arrangements in adjoining areas, means the Secretary of State and the Assembly acting jointly;
 - (b) in relation to England (except in a case to which paragraph (a) applies), means the Secretary of State; and
 - (c) in relation to Wales (except in a case to which paragraph (a) applies), means the Assembly.]]

Textual Amendments

- F20** Word in s. 89 heading inserted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(a\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F21** S. 89 substituted (18.2.2005 for E. for specified purposes, 1.8.2008 for E. for further specified purposes and 25.2.2009 for E. insofar as not already in force) by [Water Act 2003 \(c. 37\), ss. 58\(5\), 105\(3\); S.I. 2005/344, art. 2; S.I. 2008/1922, art. 2\(b\)\(c\); S.I. 2009/359, arts. 2\(c\)](#) (with saving in art. 3, Sch.)
- F22** Words in s. 89(1) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(b\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F23** Words in s. 89(1) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(c\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F24** Words in s. 89(3)(a) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(d\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F25** Words in s. 89(4) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(b\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F26** Words in s. 89(4) substituted (1.4.2013 for E.) by [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(e\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F27** S. 89(5) omitted (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 35\(13\)\(f\), 306\(2\)\(3\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

^{F28}90 Indemnities in respect of fluoridation.

- (1) The Secretary of State may, with the consent of the Treasury, agree to indemnify any water undertaker in respect of liabilities which it may incur in complying with arrangements entered into by it pursuant to section 87(1) above.
- (2) The Secretary of State may also, with the consent of the Treasury, agree to indemnify any licensed water supplier in respect of liabilities which it may incur—
 - (a) in supplying water to which fluoride has been added by a water undertaker by virtue of any such arrangements;
 - (b) (if the licensee is introducing water into the water undertaker’s supply system) in complying with any obligation imposed on it by the undertaker in consequence of the arrangements.
- (3) The Secretary of State may by regulations make provision with respect to—
 - (a) the matters in respect of which an indemnity may be given under subsection (1) or (2) above;
 - (b) the form and terms of any such indemnity; and
 - (c) such ancillary matters as he sees fit.]

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Textual Amendments

F28 Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by Water Act 2003 (c. 37), ss. 58(6), 105(3); S.I. 2005/344, art. 2; S.I. 2009/359, art. 2(c) (subject to art. 3, Sch.)

[^{F29}90A Review of fluoridation

- (1) A relevant authority which has entered into arrangements under section 87(1) above shall—
 - (a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and
 - (b) in accordance with subsections (3) to (5) below publish reports containing an analysis of those effects.
- (2) The relevant authority shall make available—
 - (a) any information collected by it for the purposes of subsection (1) above; or
 - (b) summaries of that information.
- (3) The relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which the arrangements come into force (unless section 91(1) below applies in relation to the arrangements).
- (4) Where section 91(1) below applies in relation to the arrangements, the relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which section 58 of the Water Act 2003 came into force.
- (5) The relevant authority shall publish a further report under subsection (1)(b) above within each period of four years beginning with the date on which their last such report was published.

- [The relevant authority must, in exercising its functions under subsection (1)—
- ^{F30}(5A)
 - (a) consult any local authority affected by the arrangements at such times as the relevant authority considers appropriate, and
 - (b) in particular, consult any such local authority before it publishes a report under paragraph (b) of that subsection.]
- (6) This section ceases to apply in relation to any arrangements under section 87(1) above if those arrangements are terminated.]

Textual Amendments

F29 Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by Water Act 2003 (c. 37), ss. 58(6), 105(3); S.I. 2005/344, art. 2; S.I. 2009/359, art. 2(c) (subject to art. 3, Sch.)

F30 S. 90A(5A) inserted (1.4.2013 for E.) by Health and Social Care Act 2012 (c. 7), ss. 35(14), 306(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Status: Point in time view as at 01/04/2013.

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[^{F31}91] Pre-1985 fluoridation schemes.

- (1) With effect from the appointed day, relevant pre-1985 arrangements shall be treated for the purposes of this Chapter as if they were arrangements entered into by the water undertaker in question with the relevant authority under section 87(1) above.
- (2) The relevant authority may request such modifications to the arrangements as it considers necessary in order to give effect to subsection (1) above, for example to insert the terms mentioned in section 87(6) above.
- (3) If the relevant authority and the water undertaker fail to agree the modifications requested by the authority—
 - (a) subsection (2), (3) or, as the case may be, (4) of section 87B above shall apply as if the parties had failed to agree the terms of arrangements requested under section 87(1) above; and
 - (b) following determination of the modifications—
 - (i) the relevant authority shall give notice of the determination to the water undertaker; and
 - (ii) the arrangements shall be deemed to have been modified as so determined with effect from the day after the date of the notice.
- (4) Sections 87(11) and 89(1) above (which relate to consultation) shall not apply to the deemed entry into, and modification of, arrangements by virtue of this section.
- (5) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements treated as entered into by a water undertaker by virtue of subsection (1) above.
- (6) In this section—

“the appointed day” means the day on which section 58 of the Water Act 2003 comes into force; and

“relevant pre-1985 arrangements” means arrangements in pursuance of which a scheme for increasing the fluoride content of water was being operated by a water undertaker by virtue of paragraph 1 of Schedule 7 to this Act immediately before the appointed day.]

Textual Amendments

F31 S. 91 substituted (26.3.2010 for E.) by [Water Act 2003 \(c. 37\)](#), **ss. 58(7)**, 105(3); S.I. 2010/975, art. 2(a)

Modifications etc. (not altering text)

C5 S. 91 excluded (1.4.2013 for E.) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 37(4)**, 306(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Status:

Point in time view as at 01/04/2013.

Changes to legislation:

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