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STATUTORY INSTRUMENTS

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**1999 No. 3088**

**WATER, ENGLAND AND WALES**

**The Water Appointment (Competition  
Commission) Regulations 1999**

<i>Made</i>	- - - -	<i>16th November 1999</i>
<i>Laid before Parliament</i>		<i>18th November 1999</i>
<i>Coming into force</i>	- -	<i>24th November 1999</i>

Whereas the Secretary of State considers the provisions of these Regulations appropriate for regulating the procedure to be followed with respect to certain references to the Competition Commission pursuant to the Water Industry Act 1991<sup>(1)</sup>;

Now therefore the Secretary of State in exercise of the powers conferred on him by section 12(4)(2) of that Act hereby makes the following Regulations—

**Citation and commencement**

1. These Regulations may be cited as the Water Appointment (Competition Commission) Regulations 1999 and shall come into force on 24th November 1999.

**Revocation**

2. The Water Appointment (Monopolies and Mergers Commission) Regulations 1989<sup>(3)</sup> are hereby revoked.

**Interpretation**

3. In these Regulations:

- (a) “the 1973 Act” means the Fair Trading Act 1973<sup>(4)</sup>;
- (b) “the 1991 Act” means the Water Industry Act 1991;
- (c) “the Commission” means the Competition Commission; and

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(1) 1991 c. 56.

(2) Amended by the Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 SI 1999/506.

(3) SI 1989/1162.

(4) 1973 c. 41.

- (d) “determination reference” means a reference made to the Commission for the determination of any question or other matter in pursuance of provisions contained in an instrument of appointment of a water or sewerage undertaker made under Chapter I of Part II of the 1991 Act.

#### **Procedure on determination references**

4. As soon as practicable after making a determination reference the Director shall—
- (a) serve a copy of the reference on the company whose appointment is mentioned in the reference; and
  - (b) publish particulars of the reference in such manner as he considers appropriate for the purpose of bringing the reference to the attention of persons likely to be affected by it.
5. The Commission shall carry out such investigation as it considers necessary for the purposes of determining any question or other matter contained in a determination reference.
6. It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a determination reference to give to the Commission—
- (a) any information in his possession which relates to matters falling within the scope of the investigation, and which is either—
    - (i) requested by the Commission for that purpose; or
    - (ii) information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require; and which it is within his power to give, in relation to any such matters;
- and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to it for that purpose under this regulation.
7. The provisions mentioned in regulation 8 are to apply in relation to determination references as if—
- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a determination reference; and
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director; and
    - (ii) the reference to three months were a reference to six months.
8. The provisions referred to in regulation 7 are:
- (a) sections 70 (time limit for report on merger reference) and 85(5) (attendance of witnesses and production of documents) of the 1973 Act; and
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Commission’s general functions).
9. For the purposes of determination references the Secretary of State may appoint not less than 8 members of the Commission and should he do so then in selecting a group to perform the Commission’s functions in relation to a determination reference the Chairman of the Commission must select one or more of such members.

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(5) Amended by paragraphs 1(1), and (10) to (13) of Schedule 12 to the Competition Act 1998 (c. 41), and paragraph 13 of Schedule 20 and Schedule 24 to the Companies Act 1989 (c. 40).

### **Reports on determination references**

**10.** In making a report on a determination reference the Commission shall include in the report definite conclusions on the questions or other matters comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating a proper understanding of those questions or other matters and of their conclusions.

**11.**—(1) Section 82(1) and (2) of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Commission on determination references as they apply to reports of the Commission under the 1973 Act.

(2) If a member of the group performing the functions of the Commission in relation to a determination reference dissents from any conclusions contained in the report on the reference as being the conclusions of the Commission the report shall, if that member so desires, include a statement of his dissent and of his reasons for dissenting.

**12.** A report of the Commission on a determination reference shall be made to the Director.

**13.** Subject to regulation 14 below, the Director—

- (a) shall, in receiving such a report, send a copy of it to the company to whose appointment the report relates and to the Secretary of State; and
- (b) shall, not less than fourteen days after that copy is received by the Secretary of State, publish the report in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it.

**14.** If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of fourteen days mentioned in paragraph (b) of regulation 13 above, direct the Director to exclude that matter from the report as published under that paragraph and the Director shall comply with any such direction.

16th November 1999

*Kim Howells,*  
Parliamentary Under Secretary of State for  
Consumers and Corporate Affairs,  
Department of Trade and Industry

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulation)*

These Regulations provide for the appointment of members to the Competition Commission, and for the procedure to be followed, in respect of references to the Commission made by the Director General of Water Services, under the Water Industry Act 1991, for the determination of matters arising under an instrument of appointment of a water or sewerage undertaker.