



Water Act 1989

1989 CHAPTER 15

PART II

WATER SUPPLY AND SEWERAGE SERVICES

CHAPTER I

APPOINTMENT AND REGULATION OF WATER AND SEWERAGE UNDERTAKERS

Enforcement orders

20 Orders for securing compliance with certain provisions

(1) Subject to subsections (2) and (5) and section 21 below, where in the case of any company holding an appointment under this Chapter the Secretary of State or the Director is satisfied—

(a) that that company is contravening—

(i) any condition of the company's appointment in relation to which he is the enforcement authority; or

(ii) any statutory requirement which is enforceable under this section and in relation to which he is the enforcement authority;

or

(b) that that company has contravened any such condition or requirement and is likely to do so again,

he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to subsection (5) below, where in the case of any company holding an appointment under this Chapter—

(a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) above; and

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- (b) it appears to him that it is requisite that a provisional order be made, he may (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with the condition or requirement in question.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory requirement enforceable under this section, is likely to be done, or omitted to be done, before a final order may be made.
- (4) Subject to subsection (5) and section 21 below, where the Secretary of State or the Director has made a provisional order, he shall confirm it, with or without modifications, if—
- (a) he is satisfied that the company to which the order relates—
 - (i) is contravening any condition or statutory requirement in relation to which he is the enforcement authority; or
 - (ii) has contravened any such condition or requirement and is likely to do so again;
 - and
 - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) Neither the Secretary of State nor the Director shall be required to make a final order or provisional order in relation to any company or to confirm a provisional order so made if he is satisfied—
- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
 - (b) that the company has given, and is complying with, an undertaking to take all such steps as it appears to him for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
 - (c) that the duties imposed on him by Part I of this Act preclude the making or, as the case may be, the confirmation of the order.
- (6) Where the Secretary of State or the Director, having notified a company that he is considering the making in relation to the company of a final order or provisional order or the confirmation of a provisional order so made, is satisfied as mentioned in paragraph (a), (b) or (c) of subsection (5) above, he shall—
- (a) serve notice that he is so satisfied on the company;
 - (b) publish a copy of the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (c) in a case where the Secretary of State is satisfied as mentioned in the said paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that paragraph on the Director;

but the requirements of the preceding provisions of this subsection shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 170 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

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- (7) A final or provisional order—
- (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the enforcement authority who made it.
- (8) For the purposes of this section and the following provisions of this Act—
- (a) the statutory requirements which shall be enforceable under this section in relation to a company holding an appointment under this Chapter shall be—
 - (i) such of the requirements of section 8 or 9 above as are imposed on that company in consequence of that appointment; and
 - (ii) such of the requirements of any other enactment or of any subordinate legislation as are so imposed and are made so enforceable by that enactment or subordinate legislation;
 - (b) the Director shall be the enforcement authority in relation to the conditions of an appointment under this Chapter;
 - (c) the Secretary of State shall be the enforcement authority in relation to the requirements imposed by sections 8 and 9 above; and
 - (d) the enforcement authority in relation to each of the other statutory requirements enforceable under this section shall be the Secretary of State, the Director or either of them, according to whatever provision is made by the enactment or subordinate legislation by which the requirement is made so enforceable;

and the requirement to comply with an undertaking given for the purposes of subsection (5)(b) above shall be treated as a statutory requirement enforceable under this section by the Secretary of State or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.

- (9) In this section and sections 21 and 22 below—
- “final order” means an order under this section other than a provisional order;
- “provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.
- (10) Where any act or omission constitutes a contravention of a condition of an appointment under this Chapter or of a statutory requirement enforceable under this section, the only remedies for that contravention, apart from those available by virtue of this section, shall be those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting such a contravention.

21 Procedural requirements

- (1) Before making a final order or confirming a provisional order, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out the effect of the order;

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- (b) setting out—
 - (i) the condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
 - (iii) the other facts which, in his opinion, justify the making or confirmation of the order;
 and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
- (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.
- (3) Neither the Secretary of State nor the Director shall make a final order with modifications, or confirm a provisional order with modifications, except—
- (a) with the consent to the modifications of the company to which the order relates; or
 - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Secretary of State or, as the case may be, the Director shall—
- (a) serve on the company to which the order relates such notice as appears to him to be requisite of his proposal to make or confirm the order with modifications;
 - (b) in that notice specify the period (not being less than twenty-eight days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the Secretary of State or, as the case may be, the Director shall—
- (a) serve a copy of the order on the company to which the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on the Director; and
 - (b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to revoke the order and setting out its effect; and

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- (b) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Secretary of State or the Director decides not to revoke the order to which the notice relates, he shall give notice of that decision.
- (8) A notice under subsection (6) or (7) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.
- (9) The requirements of the preceding provisions of this section shall not apply, in the case of any order in respect of a contravention of a direction under section 170 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

22 Validity and effect of orders

- (1) If the company to which a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—
 - (a) that its making or confirmation was not within the powers of section 20 above;
or
 - (b) that any of the requirements of section 21 above have not been complied with in relation to it,the company may, within forty-two days from the date of service on it of a copy of the order, make an application to the High Court under this section.
- (2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned in any legal proceedings whatsoever.
- (4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.
- (5) Where a duty is owed by virtue of subsection (4) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.
- (6) In any proceedings brought against any company in pursuance of subsection (5) above, other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of section 52(1)(a) below, it shall be a defence for the company to show that it took all reasonable steps and exercised all due diligence to avoid contravening the order.

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- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the relevant enforcement authority for an injunction or for any other appropriate relief.
- (8) In subsection (7) above “the relevant enforcement authority”, in relation to any final or provisional order, means the Secretary of State or the Director or either of them according to who is the enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.