



Water Industry Act 1991

1991 CHAPTER 56

PART II

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I

APPOINTMENTS

Making of appointments

6 Appointment of relevant undertakers.

- (1) Subject to the following provisions of this Chapter, a company may be appointed—
 - (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director,to be the water undertaker or sewerage undertaker for any area of England and Wales.
- (2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect, while the appointment remains in force—
 - (a) of requiring the company to perform any duty imposed by or under any enactment on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
 - (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any enactment on an undertaker of that description;
 - (c) of requiring enactments and subordinate legislation authorising or requiring anything to be done in relation to an undertaker of the relevant description to

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be construed as authorising or requiring that thing to be done in relation to that company; and

- (d) of requiring other references in any enactment or subordinate legislation to an undertaker of the relevant description, or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.
- (3) The appointment of a company to be a relevant undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made.
 - (4) A single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.
 - (5) A company shall not be appointed to be a water undertaker unless it is a limited company or a statutory water company and shall not be appointed to be a sewerage undertaker unless it is a limited company.
 - (6) As soon as practicable after making an appointment under this Chapter, the Secretary of State shall send a copy of the appointment to the Director.

7 **Continuity of appointments, replacement appointments etc.**

- (1) It shall be the duty of the Secretary of State to secure that such appointments are made under this Chapter as will ensure that for every area of England and Wales there is at all times both—
 - (a) a company holding an appointment under this Chapter as water undertaker; and
 - (b) whether or not the same company in relation to the whole or any part of that area, a company holding an appointment as sewerage undertaker.
- (2) Subject to the following provisions of this section—
 - (a) the Secretary of State; and
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, the Director,
 shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.
- (3) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as a relevant undertaker as secure either-
 - (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
 - (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.
- (4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's

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appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—

- (a) that company consents to the appointment or variation;
- (b) the appointment or variation relates only to parts of that area none of the premises in which is served by that company; or
- (c) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of that company's appointment.

8 Procedure with respect to appointments and variations.

- (1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.
- (2) Within fourteen days after making an application under this section, the applicant shall—
 - (a) serve notice of the application on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the application relates; and
 - (b) publish a copy of the notice in such manner as may be prescribed.
- (3) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall give notice—
 - (a) stating that he proposes to make the appointment or variation;
 - (b) stating the reasons why he proposes to make the appointment or variation; 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 appointment or variation may be made.
- (4) A notice under subsection (3) 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 bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
 - (b) by serving a copy of the notice on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.
- (5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall—
 - (a) serve a copy of the appointment or variation on the existing appointee; and
 - (b) serve notice of the making of the appointment or variation on every local authority whose area includes the whole or any part of the area to which the appointment or variation relates,

and as soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Secretary of State shall send a copy of the variation to the Director.

- (6) In this section “the existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

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9 Duties affecting making of appointments and variations.

- (1) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall consider any representations or objections which have been duly made in pursuance of the notice under section 8(3) above and have not been withdrawn.
- (2) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State shall consult the Director.
- (3) In determining whether to make an appointment or variation by virtue of section 7(4)(b) above in relation to any part of an area, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by that appointee.
- (4) It shall be the duty of the Secretary of State or, as the case may be, of the Director—
 - (a) in making an appointment or variation replacing a company as a relevant undertaker; and
 - (b) where he makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of any water or drainage charges,

to ensure, so far as may be consistent with his duties under Part I of this Act, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

- (5) In this section—

“existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;

“new appointee”, in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;

“water or drainage charges” means

 - (a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; or
 - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay.

10 Transitional provision with respect to replacement appointments.

Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

Conditions of appointments

11 Power to impose conditions.

- (1) An appointment under this Chapter may include—

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- (a) such conditions as appear to the Secretary of State or, as the case may be, the Director to be requisite or expedient having regard to the duties imposed on him by Part I of this Act;
 - (b) conditions for the purposes of section 7(4)(c) above; and
 - (c) conditions requiring the rendering to the Secretary of State of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.
- (2) Conditions may be included by virtue of subsection (1)(a) above in an appointment under this Chapter whether or not they are connected with the supply of water, the provision of sewerage services or the exercise or performance of any power or duty conferred or imposed by or under any enactment on water undertakers or sewerage undertakers.
- (3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.
- (4) Any provision included by virtue of subsection (3) above in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.
- (5) For the purposes of this Act where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this section shall have effect, irrespective of their subject-matter, as conditions of both appointments.
- (6) Where an instrument of appointment has been served under subsection (3) of section 6 above on any company, the coming into force of the appointment for the purposes specified in subsection (2) of that section shall not be affected by any contravention of the requirements of this Act with respect to the provision contained by way of conditions of appointment in that instrument.
- (7) If the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in subsection (6) above, he may by order made by statutory instrument direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.
- (8) Any sums received by the Secretary of State in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

12 Determinations under conditions of appointment.

- (1) Without prejudice to the generality of paragraph (a) of section 11(1) above, conditions included in an appointment by virtue of that paragraph may—
 - (a) require the appointed company to comply with any direction given by the Director as to such matters as are specified in the appointment or are of a description so specified; and

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- (b) require the appointed company, except in so far as the Director consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment or are of a description so specified.
- (2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—
 - (a) the Secretary of State or the Director; or
 - (b) on a reference by the Director, the Monopolies and Mergers Commission (in this Act referred to as “the Monopolies Commission”),
 of such questions arising under the appointment and of such other matters, including (in the case of references to the Commission) disputes as to determinations by the Director, as are specified in the appointment or are of a description so specified.
- (3) Where any question or other matter falls to be determined by the Monopolies Commission in pursuance of a provision contained in an appointment under this Chapter—
 - (a) it shall be the duty of the Director, on being required to do so by the company holding that appointment, to refer that question or matter to that Commission; and
 - (b) it shall be the duty of that Commission to determine any question or other matter referred by virtue of paragraph (a) above in accordance with—
 - (i) any regulations under subsection (4) below; and
 - (ii) the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.
- (4) The Secretary of State may by regulations make such provision as he considers appropriate for regulating the procedure to be followed with respect to the reference of any question or other matter to the Monopolies Commission in pursuance of provision contained in an appointment under this Chapter.
- (5) Without prejudice to the generality of the power conferred by subsection (4) above, regulations under that subsection may, in relation to any such reference as is mentioned in that subsection, apply (with or without modifications) the provisions of any enactment relating to references to the Monopolies Commission under the following provisions of this Act, the 1973 Act or the 1980 Act.

Modification of appointment conditions

13 Modification by agreement.

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.
- (2) Before making modifications under this section, the Director shall give notice—
 - (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; 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 modifications may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.

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- (3) A notice under subsection (2) above shall be given—
 - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the company and on the Secretary of State.
- (4) The Director shall not under this section make any modifications which the Secretary of State has, within the time specified in the notice under subsection (2) above, directed the Director not to make.
- (5) The Secretary of State shall not give a direction under subsection (4) above in relation to any modification unless—
 - (a) the modification is a modification of provision contained in the appointment for the purposes of section 7(4)(c) above;
 - (b) the modification is a modification of a provision of the appointment which relates to the disposal of, or of interests or rights in or over, a company's protected land and is stated in the appointment to be a provision which cannot be modified; or
 - (c) it appears to the Secretary of State that the modification should be made, if at all, under section 16 below.

14 Modification references to Monopolies Commission.

- (1) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
 - (a) whether any matters which—
 - (i) relate to the carrying out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; and
 - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the company's appointment.
- (2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this section by—
 - (a) adding to the matters specified in the reference; or
 - (b) excluding from the reference some or all of the matters so specified;and on receipt of any such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—
 - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
 - (b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in his opinion, those effects could be remedied or prevented.

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- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director shall—
- (a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and
 - (b) publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, 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 them for that purpose under this subsection.
- (6) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by Part I of this Act.
- (7) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this section 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 reference under this section;
 - (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
 - (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to subsection (2) above; and
 - (e) paragraph 16(2) of that Schedule were omitted.
- (8) For the purposes of references under this section, there shall be not less than eight additional members of the Monopolies Commission appointed from time to time by the Secretary of State; and, if any functions of that Commission in relation to any such reference are performed through a group—
- (a) the chairman of that Commission shall select one or more of those additional members to be members of the group; and
 - (b) the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the 1973 Act shall be reduced by the number of additional members selected.

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14A References under section 14: time limits

- (1) Every reference under section 14 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 14 above shall not have effect (and no action shall be taken in relation to it under section 16 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.
- (3) The Director may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
 - (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (b) send a copy of what has been published by him under paragraph (a) above to the company whose appointment is mentioned in the reference.

14B References under section 14: powers of investigation

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 14 above as they apply for the purposes of references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) subsection (2) were omitted; and
 - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
 - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and

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- (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

15 Reports on modification references.

- (1) In making a report on a reference under section 14 above, the Monopolies Commission—
 - (a) shall include in the report definite conclusions on the questions 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 and of their conclusions;
 - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
 - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company’s appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) Where, on a reference under section 14 above, the Monopolies Commission conclude that a company holding an appointment under this Chapter is a party to an agreement to which the ^{M1}Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.
- (3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 14 above as it applies to reports of the Commission under that Act.
- (4) A report of the Monopolies Commission on a reference under section 14 above shall be made to the Director.
- (5) Subject to subsection (6) below, the Director—
 - (a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter 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 another copy of that report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

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- (6) 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 subsection (5) above, direct the Director to exclude that matter from every copy of the report to be published by virtue of that paragraph; and the Director shall comply with any such direction.

Marginal Citations

M1 1976 c. 34.

16 Modification following report.

- (1) Where a report of the Monopolies Commission on a reference under section 14 above—
- includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - specifies effects adverse to the public interest which those matters have or may be expected to have;
 - includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter; and
 - specifies modifications by which those effects could be remedied or prevented,
- the Director shall, subject to the following provisions of this section, make such modifications of the conditions of that appointment as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
- stating that he proposes to make the modifications and setting out their effect;
 - stating the reasons why he proposes to make the modifications; and
 - 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 modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- by publishing the notice in such manner as 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 the making of the modifications; and
 - by serving a copy of the notice on the company whose appointment it is proposed to modify.
- (5) The Director shall not under this section make any modification of any provisions of a company's appointment under this Chapter which—

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- (a) are contained in that appointment for the purposes of section 7(4)(c) above; or
- (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

16A Commission's power of veto following report

- (1) The Competition Commission (in this section referred to as "the Commission") may, within the period of four weeks after the date on which it is given a notice under section 16(4A) above, direct the Authority—
 - (a) not to make the modifications set out in that notice; or
 - (b) not to make such of the modifications as may be specified in the direction; and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under section 16(4A) above and on the application of the Commission, direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 16(4C) above) shall be extended by fourteen days.
- (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 16(4A)(a) above as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the Commission gives a direction under subsection (1) above, it—
 - (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
 - (b) shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—
 - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
 - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 16(4C)(b) above.
- (5) In exercising its power under subsection (4)(b) above, the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a company's appointment.
- (6) Before making modifications under subsection (4)(b) above the Commission shall give notice—
 - (a) stating that it proposes to make the modifications and setting them out;
 - (b) stating the reason why it proposes to make them;
 - (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 modifications may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.

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- (7) A notice under subsection (4)(a) or (6) above shall be given—
- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy on the Authority and the company whose conditions of appointment it is proposed should be modified.
- (8) The Commission may not make any modification under this section which the Authority could not make under section 16 above.
- (9) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (10) This section does not apply to the modification of the conditions of a company's appointment following a report of the Commission made before the commencement of section 55 of the Water Act 2003.

16B Commission's power of veto following report: supplementary

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (9) of section 16A above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 16A above, or publishing any notice under subsection (9) of that section, the Commission must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable) —
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8) below, for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under section 16A above, as they apply for the purposes of any investigations on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and

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- (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—
- (a) subsection (2) were omitted;
 - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted the publication by the Commission of a notice under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the Commission under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; and
 - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6) above, have effect as if for sub-paragraph (ii) there were substituted—
- (ii) if earlier, the day on which a notice is published by the Commission under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the Commission under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.
- (9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.
- (10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

17 **Modification by order under other enactments.**

- (1) Subject to subsection (3) below, where in the circumstances mentioned in subsection (2) below the Secretary of State by order exercises any of the powers specified in—
- (a) Parts I and II of Schedule 8 to the 1973 Act; or
 - (b) section 10(2)(a) of the 1980 Act,
- the order may also provide for the modification of the conditions of a company’s appointment under this Chapter to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) Subsection (1) above shall have effect where—
- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the carrying out of any of the functions of a relevant undertaker;
 - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were both engaged in carrying out functions of a relevant undertaker; or

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- (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the carrying out of any of the functions of a relevant undertaker.
- (3) No modification shall be made by virtue of this section of any provisions of a company's appointment under this Chapter which—
- (a) are contained in that appointment for the purposes of section 7(4)(c) above; or
 - (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.
- (4) Expressions used in this section and in the 1973 Act or the 1980 Act have the same meanings in this section as in that Act.

[^{F3}CHAPTER 1A

LICENSING OF WATER SUPPLIERS

Textual Amendments

- F3** Pt. 2 Ch. 1A inserted (1.4.2004 for specified provisions and purposes and 1.8.2005 for further specified provisions and purposes and 1.10.2005 for further specified provisions and 1.12.2005 otherwise) by [Water Act 2003 \(c. 37\)](#), ss. 56, 105(3), [Sch. 4 para. 2](#); [S.I. 2004/641](#), [art. 3\(I\)](#), [Sch. 1](#) (with [art. 6](#), [Sch. 3](#)); [S.I. 2005/968](#), [art. 3\(b\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2); [S.I. 2005/2714](#), [arts. 2\(h\)](#), [3\(a\)](#) (with [Sch. para. 5](#))

Granting of licences

17A Licensing of water suppliers

- (1) Subject to the following provisions of this Chapter—
- (a) the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State (after consulting the Assembly), the Authority,
- may grant to a company a licence (a “water supply licence”) giving it the retail authorisation referred to in subsection (2) below, or both that and the supplementary authorisation referred to in subsection (5) below.
- (2) The retail authorisation is an authorisation to the company to use a water undertaker's supply system for the purpose of supplying water to the premises of customers of the company (subject to subsection (3) below) in accordance with Chapter 2A of Part 3 of this Act.
- (3) The following requirements must be satisfied in relation to each of the premises supplied by the company—
- (a) the requirement that the premises are not household premises (as defined in section 17C below);
 - (b) the threshold requirement (construed in accordance with section 17D below);
- and

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- (c) the requirement that the premises are not being supplied with water by another company pursuant to a water supply licence,
and those requirements shall be enforceable under section 18 below by the Authority.
- (4) A water supply licence which gives a company only the retail authorisation is referred to in this Chapter as a “retail licence”.
- (5) The supplementary authorisation is an authorisation to the company to introduce water into a water undertaker’s supply system, by means of which any particular supply of water in accordance with the retail authorisation is to take place, in connection with that supply and in accordance with Chapter 2A of Part 3 of this Act.
- (6) A water supply licence which gives a company also the supplementary authorisation is referred to in this Chapter as a “combined licence”.
- (7) Before granting a combined licence—
- (a) the Secretary of State shall consult the Assembly; and
 - (b) the Authority shall consult the Secretary of State and the Assembly.
- (8) A water supply licence shall not be granted to a company unless—
- (a) it is a limited company; and
 - (b) it is not a relevant undertaker.
- (9) The Authority may, with the approval of the Secretary of State, issue guidance as to the factors which are, or are not, to be taken into account in determining the extent of any premises for the purposes of subsection (3) above.
- (10) Before giving his approval to any guidance issued under subsection (9) above, the Secretary of State shall consult the Assembly.

Modifications etc. (not altering text)

- C1** S. 17A(1) applied (1.4.2005) by [The Water Industry \(Determination of Turnover for Penalties\) Order 2005 \(S.I. 2005/477\)](#), {art. 2}

17B Section 17A: supplementary

- (1) The Authority shall publish guidance issued under section 17A(9) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (2) The Authority may, with the approval of the Secretary of State, revise the guidance so issued.
- (3) Before giving his approval to guidance revised under subsection (2) above, the Secretary of State shall consult the Assembly.
- (4) Subsection (1) above applies to guidance revised under subsection (2) above as it applies to guidance issued under section 17A(9) above.
- (5) In this Chapter, references to the supply system of a water undertaker are to the system comprising the following—
 - (a) any water mains and other pipes which it is the water undertaker’s duty to develop and maintain by virtue of section 37 below and which are used for

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- the purpose of conveying water from the undertaker’s treatment works to the premises of customers; and
- (b) any water mains and other pipes which—
- (i) are used by the undertaker for the purpose of conveying non-domestic water from any of its sources to the premises of customers; and
 - (ii) are not connected to any water mains or pipes falling within paragraph (a) above or to any water mains or other pipes connected to the treatment works mentioned in that paragraph (whether directly or indirectly),
- and in sub-paragraph (i) above the reference to non-domestic water is to water supplied other than for domestic or food production purposes.
- (6) In subsection (5)(a) above, the reference to treatment works is a reference to the works designated from time to time by the Secretary of State as treatment works for the purposes of this subsection.
- (7) Before designating any works for the purposes of subsection (6) above, the Secretary of State shall consult the Assembly.
- (8) A list of any works designated for the purposes of subsection (6) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.
- (9) References in this Act to a licensed water supplier are references to a company which is the holder for the time being of a water supply licence.

17C Meaning of household premises

- (1) For the purposes of section 17A(3)(a) above, “household premises” means premises in which, or in any part of which, a person has his home.
- (2) The fact that a person has his home in, or in part of, any premises does not mean that the premises are household premises unless the principal use of the premises is as a home.
- (3) The Secretary of State may by regulations make provision as to—
- (a) the circumstances in which a person is or is not to be treated as having his home in, or in part of, any premises for the purposes of this section; and
 - (b) the factors which are, or are not, to be taken into account in determining the principal use of any premises for those purposes.
- (4) The power to make regulations under subsection (3) above is exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

17D The threshold requirement

- (1) This section applies for the purpose of construing the reference to the threshold requirement in section 17A(3)(b) above in relation to the supply of water to any premises.
- (2) The requirement is that, at the time when the licensed water supplier first enters into an undertaking with a customer to give the supply, the total quantity of water estimated

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- to be supplied to the premises annually pursuant to the undertaking is not less than 50 megalitres.
- (3) Any estimate of the quantity of water to be supplied to any premises for the purposes of subsection (2) above shall be made in accordance with guidance issued by the Authority with the approval of the Secretary of State.
 - (4) Any guidance issued under subsection (3) above may, in particular—
 - (a) specify—
 - (i) the factors to be, and not to be, taken into account;
 - (ii) the assumptions to be made; and
 - (iii) the method of calculation to be employed, in making estimates; and
 - (b) make provision as to the commencement of the annual periods by reference to which estimates are to be made.
 - (5) Before giving his approval to any guidance issued under that subsection, the Secretary of State shall consult the Assembly.
 - (6) Subsections (1) to (4) of section 17B above apply to guidance issued under subsection (3) above as they apply to guidance issued under section 17A(9) above.
 - (7) The Secretary of State may make provision by regulations as to the circumstances in which a licensed water supplier is not, for the purposes of subsection (2) above, to be treated as entering into an undertaking with a new customer to give a supply of water to any premises (subject to subsection (12) below).
 - (8) The Secretary of State may by regulations amend subsection (2) above by substituting, for the quantity of water for the time being specified there, a different quantity of water (subject to subsection (12) below).
 - (9) Regulations under subsection (8) above—
 - (a) shall include provision for the amendment made by the regulations not to apply in relation to any undertaking entered into before the date on which the regulations come into force; and
 - (b) may include provision for that amendment not to apply in relation to any undertaking which is proposed, but not entered into, before that date.
 - (10) A statutory instrument containing regulations under subsection (8) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
 - (11) Before making regulations under subsection (8) above, the Secretary of State shall consult—
 - (a) the Authority; and
 - (b) such other persons (if any) as the Secretary of State thinks it appropriate to consult.
 - (12) The powers to make regulations under subsections (7) and (8) above are exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

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- (13) Subsections (9) and (11) above apply in relation to regulations made by the Assembly under subsection (8) above by virtue of subsection (12) above as they apply in relation to regulations made by the Secretary of State under subsection (8) above.

17E Determinations by the Authority

- (1) The Authority may determine, in a case referred to it by a licensed water supplier or a potential customer of a licensed water supplier, whether a proposed supply of water by the supplier to the customer would be in accordance with the retail authorisation given to the supplier in the licence.
- (2) The matters which the Authority may determine include the following matters—
- (a) the extent of the premises to be supplied for the purposes of section 17A(3) above;
 - (b) whether the premises to be supplied are household premises (as defined in section 17C above); and
 - (c) whether the threshold requirement is satisfied in relation to the premises to be supplied (construed in accordance with section 17D above),
- and also include any other matter the determination of which is relevant to those matters.

17F Procedure for granting water supply licences

- (1) An application for—
- (a) a water supply licence;
 - (b) the variation of a retail licence so that it gives also the supplementary authorisation; or
 - (c) the variation of a combined licence so that it gives only the retail authorisation,
- shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.
- (2) Within the prescribed period after the making of such an application, the applicant shall publish in the prescribed manner a notice of the application containing such particulars as may be prescribed.
- (3) The particulars which may be prescribed by virtue of subsection (2) above include the time within which, and the address at which, representations or objections with respect to the application may be made.
- (4) If the Secretary of State or the Authority proposes to refuse the application, he or it shall give to the applicant a notice—
- (a) stating that he or it proposes to refuse the application;
 - (b) stating the reasons why he or it proposes to refuse the application; and
 - (c) specifying the time within which representations or objections with respect to the proposed refusal may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) The Secretary of State may make provision by regulations disapplying subsections (2) and (3) above in relation to an application under subsection (1) above in such circumstances as may be prescribed.

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- (6) A licence shall be in writing and, unless revoked or suspended in accordance with any condition contained in it, shall continue in force for such period as may be specified in or determined by or under the licence.
- (7) As soon as practicable after granting a licence or variation of a licence, the Secretary of State or the Authority shall serve a copy of the licence or licence as varied—
- (a) on the licence holder;
 - (b) on the Assembly;
 - (c) on the Chief Inspector of Drinking Water;
 - (d) on the Environment Agency;
 - (e) on the Council;
 - (f) on each relevant undertaker;
 - (g) on each licensed water supplier (other than the holder of the licence in question);
 - (h) if the licence or variation is granted by the Secretary of State, on the Authority;
 - (i) if the licence or variation is granted by the Authority, on the Secretary of State.
- (8) Any sums received by the Secretary of State or by the Authority by virtue of this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

C2 S. 17F(2)(3) excluded (1.8.2005) by [The Water Supply Licence \(Application\) Regulations 2005 \(S.I. 2005/1638\)](#), [reg. 5\(7\)](#)

Licence conditions

17G Water supply licence conditions

- (1) A water supply licence may include—
- (a) such conditions as appear to the Secretary of State or, as the case may be, the Authority to be requisite or expedient having regard to the duties imposed on him or it by Part 1 of this Act;
 - (b) conditions requiring the rendering to the Secretary of State of a payment on the grant of a water supply licence, or payments while such a licence is in force, or both, of such amount or amounts as may be determined by or under the conditions.
- (2) Conditions may be included by virtue of subsection (1)(a) above in a water supply licence whether or not they are connected with the supply of water or the introduction of water into a water undertaker's supply system.
- (3) Conditions included in a water supply licence may—
- (a) require the holder of the licence to comply with any direction given by a specified relevant person as to specified matters or matters which are of a specified description;
 - (b) require the holder of the licence to do or not to do specified things or things which are of a specified description, except in so far as a specified relevant person consents to the holder's not doing or doing them; and

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- (c) provide for the reference to and determination by a specified relevant person of specified questions, or questions which are of a specified description, which arise under or in connection with the licence.
- (4) For the purposes of subsection (3) above—
 - (a) the following are relevant persons—
 - (i) the Secretary of State;
 - (ii) the Authority;
 - (iii) the Assembly;
 - (iv) the Environment Agency; and
 - (b) “specified” means specified in the licence in question.
- (5) Conditions included in a water supply licence may contain provision for the conditions to have effect, cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined in accordance with the conditions.
- (6) Any such condition as is referred to in subsection (5) above shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of a licence.
- (7) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

17H Standard conditions of water supply licences

- (1) Such conditions as may be—
 - (a) determined by the Secretary of State (after consulting the Assembly); and
 - (b) published by him in such manner as he considers appropriate,shall be standard conditions of water supply licences granted by the Secretary of State or the Authority.
- (2) The standard conditions which may be determined may be different for—
 - (a) retail licences; and
 - (b) combined licences,and standard conditions relating to the retail authorisation may be different depending on whether they are to relate to retail licences or combined licences.
- (3) The power to determine standard conditions in relation to retail licences and combined licences may be exercised only before the grant of (respectively) the first retail licence and the first combined licence (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).
- (4) The standard conditions for the purposes of water supply licences of either description may contain provision—
 - (a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
 - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and

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- (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
- (5) Subject to subsection (6) below, each condition which is a standard condition shall be incorporated by reference in each water supply licence (or in each such licence to which the standard condition applies).
- (6) Subject to the following provisions of this section, the Secretary of State or the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as he or it considers requisite to meet the circumstances of a particular case.
- (7) Before excluding any standard conditions or making any modifications under subsection (6) above, the Secretary of State or the Authority shall give notice—
- (a) stating that he or it proposes to exclude the conditions or make the modifications and setting out the effect of so doing;
 - (b) stating the reasons why he or it proposes to exclude the conditions or make the modifications; and
 - (c) specifying the time (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 exclusions or modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (8) A notice under subsection (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 Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and
 - (b) by serving a copy of the notice—
 - (i) on the Assembly;
 - (ii) on the Chief Inspector of Drinking Water;
 - (iii) if the notice is published by the Secretary of State, on the Authority;
 - (iv) if the notice is published by the Authority, on the Secretary of State.
- (9) If, within the time specified in the notice under subsection (7) above, the Secretary of State (after consulting the Assembly) directs the Authority not to exclude or modify any standard condition, the Authority shall comply with the direction.
- (10) The Secretary of State or the Authority shall not exclude any conditions, or make any modifications, under subsection (6) above unless he or it is of the opinion that the exclusions or modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and
 - (b) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).
- (11) The modification under subsection (6) above of part of a standard condition shall not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.

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17I Modification of water supply licences by agreement

- (1) Subject to the following provisions of this section, the Authority may modify the conditions of a particular water supply licence.
- (2) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—
 - (a) are requisite to meet the circumstances of the particular case; and
 - (b) are such that—
 - (i) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and
 - (ii) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (3) Before making modifications under this section, the Authority shall give notice—
 - (a) stating that it proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why it proposes to make the modifications; 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 modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
 - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on—
 - (i) the licence holder;
 - (ii) the Council;
 - (iii) the Secretary of State;
 - (iv) the Assembly; and
 - (v) the Chief Inspector of Drinking Water.
- (5) If, within the period specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

17J Modification of standard conditions of water supply licences

- (1) Subject to the following provisions of this section, the Authority may modify the standard conditions of retail licences or combined licences.
- (2) Where at any time the Authority modifies the standard conditions of retail licences or combined licences under this section the Authority may make such incidental or

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consequential modifications as it considers necessary or expedient of any conditions of any licence of that description.

- (3) Before making any modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why it proposes to make the modifications; and
 - (c) specifying the time (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 modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on—
 - (i) each relevant licence holder;
 - (ii) the Council;
 - (iii) the Secretary of State;
 - (iv) the Assembly; and
 - (v) the Chief Inspector of Drinking Water.
- (5) If, within the time specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The Authority may not under this section make any modifications of the standard conditions of retail licences or combined licences unless—
- (a) no notice of objection to those modifications is given by any relevant licence holder to the Authority within the time specified in the notice under subsection (3) above;
 - (b) if one or more relevant licence holders give notice of objection to the Authority within that time—
 - (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be specified in an order made by statutory instrument by the Secretary of State; and
 - (ii) the percentage given by subsection (7) below is less than such percentage as may be so specified; or
 - (c) subsection (8) below applies to the case.
- (7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share at such time and in such manner as may be specified in an order under subsection (6) above.
- (8) This subsection applies where the Authority is satisfied that—
- (a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;

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- (b) the modifications would remove or reduce the burden without removing any necessary protection; and
 - (c) the modifications are such that no holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences.
- (9) An order under subsection (6) above may include such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (10) Before making an order under subsection (6) above, the Secretary of State shall consult the Assembly.
- (11) A statutory instrument containing an order under subsection (6) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) Where the Authority modifies the standard conditions of retail licences or combined licences, the Authority shall—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
 - (b) publish the modifications in such manner as it considers appropriate.
- (13) In this section “relevant licence holder”, in relation to proposed modifications of standard conditions of retail licences or combined licences, means the holder of a licence of that description—
- (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
 - (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 17H(4) above) at the time specified in the notice under subsection (3) above.

17K Water supply licences: modification references to Competition Commission

- (1) The Authority may make to the Competition Commission (in this section and the following provisions of this Chapter referred to as “the Commission”) a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which—
 - (i) relate to the carrying on of activities authorised or regulated by a particular licence; and
 - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the conditions of the licence.
- (2) The Authority may make to the Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which—
 - (i) relate to the carrying on of activities authorised or regulated by retail licences or combined licences; and

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- (ii) are specified in the reference,
 operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the standard conditions of licences of that description.
- (3) The Authority may, at any time, by notice given to the Commission vary a reference under this section by—
- (a) adding to the matters specified in the reference; or
 (b) excluding from the reference some of the matters so specified,
- and on receipt of any such notice the Commission shall give effect to the variation.
- (4) The Authority may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and
 (b) any modifications of the relevant conditions by which, in its opinion, those effects could be remedied or prevented.
- (5) As soon as practicable after making a reference under this section or a variation of such a reference, the Authority shall—
- (a) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and
 (b) serve a copy of the reference or variation on—
- (i) the licence holder or, as the case may be, the relevant licence holders;
 (ii) the Council;
 (iii) the Secretary of State;
 (iv) the Assembly; and
 (v) the Chief Inspector of Drinking Water.
- (6) If, before the end of the period of twenty-eight days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Commission—
- (a) not to proceed with the reference; or
 (b) not to give effect to the variation,
- the Commission shall comply with the direction.
- (7) It shall be the duty of the Authority, for the purpose of assisting the Commission in carrying out an investigation on a reference under this section or in carrying out functions under section 17P below, to give to the Commission—
- (a) any information in the Authority’s possession which relates to matters falling within the scope of the investigation or the carrying out of those functions and which is either—
- (i) requested by the Commission for that purpose; or
 (ii) information which, in the Authority’s 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 the Authority’s power to give, in relation to any such matters,

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and the Commission, for the purpose of carrying out any such investigation or such functions, shall take account of any information given to it for that purpose under this subsection.

- (8) In this section and the following provisions of this Chapter—
- “relevant conditions”—
- (a) in relation to a reference under subsection (1) above, means the conditions of the licence to which the reference relates; and
 - (b) in relation to a reference under subsection (2) above, means the standard conditions of the licences to which the reference relates; and
- “relevant licence holder” means the holder of a licence to which a reference under subsection (2) above relates.
- (9) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Authority by Part 1 of this Act.

17L References under section 17K: time limits

- (1) Every reference under section 17K above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 17K above shall not have effect (and no action shall be taken in relation to it under section 17O below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
 - (a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

17M References under section 17K: powers of investigation

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 17K above as they apply for the purposes of references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc);
 - (b) section 110 (enforcement of powers under section 109: general);

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- (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
 - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted made;
 - (b) for the words “published (or given)”, in both places where they appear, there were substituted made; and
 - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

17N Water supply licences: reports on modification references

- (1) In making a report on a reference under section 17K above, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of its conclusions;
 - (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
 - (c) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) For the purposes of section 17O below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 17K above as the conclusions of the

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- Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 17K above.
- (5) In making any report on a reference under section 17K above the Commission must have regard to the following considerations before disclosing any information.
- (6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (7) The second consideration is the need to exclude from disclosure (so far as practicable)
-
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual’s interests.
- (8) The third consideration is the extent to which the disclosure of the information mentioned in subsection (7)(a) or (b) above is necessary for the purposes of the report.
- (9) A report of the Commission on a reference under section 17K above shall be made to the Authority.
- (10) Subject to subsection (13) below, the Authority shall—
- (a) on receiving a report on a reference under section 17K(1) above, serve a copy of it on—
- (i) the licence holder;
- (ii) the Council;
- (iii) the Secretary of State; and
- (iv) the Assembly; and
- (b) not earlier than the relevant time, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (11) Subject to subsection (13) below, the Authority shall—
- (a) on receiving a report on a reference under section 17K(2) above, serve a copy of it on—
- (i) the Secretary of State; and
- (ii) the Assembly; and
- (b) not earlier than the relevant time—
- (i) serve another copy on each relevant licence holder; and
- (ii) not less than twenty-four hours after complying with subparagraph (i) above, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (12) For the purposes of subsections (10) and (11) above, the “relevant time” means—
- (a) fourteen days after the copy of the report in question is received by the Secretary of State and the Assembly, or

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- (b) if copies are received by them on different days, fourteen days after the later day.
- (13) Subsection (14) below applies if it appears to the Secretary of State that the publication of any matter in a report on a reference under section 17K(1) or (2) above would be against—
 - (a) the public interest; or
 - (b) the commercial interests of any person.
- (14) The Secretary of State may, not later than the relevant time for the purposes of subsection (10) or (11) above, direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be served and published as mentioned in paragraph (b) of that subsection; and the Authority shall comply with any such direction.

170 Water supply licences: modification following report

- (1) Where a report of the Commission on a reference under section 17K above—
 - (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and
 - (d) specifies modifications by which those effects could be remedied or prevented,

the Authority shall, subject to the following provisions of this section, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences in consequence of a reference under section 17K(2) above, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.
- (3) Before making modifications under this section, the Authority shall have regard to the modifications specified in the report.
- (4) Before making modifications under this section, the Authority shall give notice—
 - (a) stating that it proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why it proposes to make the modifications; 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 modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (4) above shall be given—
 - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications;

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- (b) by serving a copy of the notice on the holder of the licence in question or, as the case may be, the relevant licence holders; and
 - (c) by serving a copy of the notice on—
 - (i) the Council;
 - (ii) the Secretary of State;
 - (iii) the Assembly; and
 - (iv) the Chief Inspector of Drinking Water.
- (6) After considering any representations or objections made in response to proposals set out in a notice under subsection (4) above, the Authority shall give notice to the Commission—
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
 - (b) stating the reasons for making the modifications.
- (7) The Authority shall include with the notice under subsection (6) above a copy of any representations or objections received in relation to the notice under subsection (4) above.
- (8) If the period of four weeks from the date on which the notice under subsection (6) above is given elapses without a direction under section 17P(1)(a) below having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
 - (b) if a direction under section 17P(1)(b) below has been given, make the modifications which are not specified in the direction.
- (9) The modification under subsection (1) above of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences in consequence of a reference under section 17K(2) above, the Authority shall—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
 - (b) publish the modifications made for those purposes in such manner as it considers appropriate.

17P Water supply licences: Commission’s power of veto following report

- (1) The Commission may, within the period of four weeks after the date on which it is given a notice under section 17O(6) above, direct the Authority—
- (a) not to make the modifications set out in that notice; or
 - (b) not to make such of the modifications as may be specified in the direction; and the Authority shall comply with any such direction.
- (2) The Secretary of State may—
- (a) within the period of four weeks after the date on which the Commission is given a notice under section 17O(6) above; and
 - (b) on the application of the Commission,

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- direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 17O(8) above) shall be extended by fourteen days.
- (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 17O(6)(a) above as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the Commission gives a direction under subsection (1) above, it shall—
- (a) give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
 - (b) make such modifications itself of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
 - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
 - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 17O(8)(b) above.
- (5) In exercising its power under subsection (4)(b) above the Commission shall have regard to the matters as respects which duties are imposed on the Authority by Part 1 of this Act.
- (6) Before making modifications under subsection (4)(b) above the Commission shall give notice—
- (a) stating that it proposes to make the modifications and setting them out;
 - (b) stating the reason why it proposes to make them;
 - (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 modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) above shall be given—
- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications;
 - (b) by serving a copy of the notice on—
 - (i) the Authority;
 - (ii) the holder of the licence in question or, as the case may be, the relevant licence holders;
 - (iii) the Council;
 - (iv) the Secretary of State;
 - (v) the Assembly; and
 - (vi) the Chief Inspector of Drinking Water.
- (8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

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- (9) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where, in consequence of a reference under section 17K(2) above, the Commission modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.
- (11) Where, in consequence of a reference under section 17K(2) above, the Commission modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority shall—
 - (a) make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time, and
 - (b) publish the modifications made for those purposes in such manner as it considers appropriate.

17Q Section 17P: supplementary

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8) of section 17P above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 17P above, or publishing any notice under subsection (8) of that section, the Commission must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable) —
 - (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8) below, for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under section 17P above, as they apply for the purposes of any investigation on references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);

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- (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—
- (a) subsection (2) were omitted,
 - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted the publication by the Commission of a notice under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the Commission under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; and
 - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
- (ii) if earlier, the day on which a notice is published by the Commission under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the Commission under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.
- (9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.
- (10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

17R Water supply licences: modification by order under other enactments

- (1) Where the OFT, the Commission or the Secretary of State (the “relevant authority”) makes a relevant order, the order may also provide for the modification of—
- (a) the conditions of a particular retail licence or combined licence; or
 - (b) the standard conditions of retail licences or combined licences,
- to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or

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- (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or
 - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a retail licence or combined licence.
- (3) The modification under subsection (1)(a) above of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (4) Where at any time the relevant authority modifies under subsection (1)(b) above the standard conditions of retail licences or combined licences, the relevant authority—
- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
 - (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences of that description granted before that time.
- (5) Where at any time the relevant authority modifies standard conditions of retail licences or combined licences under subsection (4)(a) above for the purposes of their incorporation in licences, the relevant authority shall publish those modifications in such manner as the relevant authority considers appropriate.
- (6) Expressions used in subsection (2) above and in Part 3 or 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.]

CHAPTER II

ENFORCEMENT OF INSOLVENCY

Enforcement orders

18 Orders for securing compliance with certain provisions.

- (1) Subject to subsection (2) and sections 19 and 20 below, where in the case of any company holding an appointment under Chapter I of this Part [^{F4}or a licence under Chapter 1A of this Part] the Secretary of State or the Director is satisfied—
- (a) that that company is contravening—
 - (i) any condition of the company's appointment [^{F5}or licence] in relation to which he is the enforcement authority; or
 - (ii) any statutory or other requirement which is enforceable under this section and in relation to which he is the enforcement authority;
 - or
 - (b) that that company [^{F6}is likely to contravene any such condition or requirement]
- he shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

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- [^{F7}(1A) Subject to subsection (2) and sections 19 and 20 below, where—
- (a) in the case of any company holding an appointment under Chapter 1 of this Part, the Secretary of State or the Authority is satisfied that the company—
 - (i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding a licence under Chapter 1A of this Part; or
 - (ii) is likely to cause or contribute to any such contravention; or
 - (b) in the case of any company holding a licence under Chapter 1A of this Part, the Secretary of State or the Authority is satisfied that the company—
 - (i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding an appointment under Chapter 1 of this Part; or
 - (ii) is likely to cause or contribute to any such contravention,

he or it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.]
- (2) Subject to section 19 below, where in the case of any company holding an appointment under Chapter I of this Part [^{F8}or a licence under Chapter 1A of this Part]—
- (a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) [^{F9}or (1A)] above; and
 - (b) it appears to him that it is requisite that a provisional enforcement order be made,
- he may (instead of taking steps towards the making of a final order) by a provisional enforcement 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 enforcement 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 or other requirement enforceable under this section, is likely to be done, or omitted to be done, before a final enforcement order may be made.
- (4) Subject to sections 19 and 20 below, where the Secretary of State or the Director has made a provisional enforcement 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 or other requirement in relation to which he is the enforcement authority; or
 - [^{F10}(ii) is likely to contravene any such condition or requirement;][^{F11}or
 - (iii) is causing or contributing to a contravention of any such condition or requirement; or
 - (iv) is likely to cause or contribute to any such contravention;]

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) An enforcement order—

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- (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.
- (6) For the purposes of this section and the following provisions of this Act—
- (a) the statutory and other requirements which shall be enforceable under this section in relation to a company holding an appointment under Chapter I of this Part [^{F12}or a licence under Chapter 1A of this Part] shall be such of the requirements of any enactment or of any subordinate legislation as—
 - (i) are imposed in consequence of that appointment [^{F13}or licence] ; and
 - (ii) 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 Chapter I of this Part [^{F14}or of a licence under Chapter 1A of this Part] ; and
 - (c) the enforcement authority in relation to each of the statutory and other 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.
- (7) In this section and the following provisions of this Chapter—
- “enforcement order” means a final enforcement order or a provisional enforcement order;
- “final enforcement order” means an order under this section other than a provisional enforcement order;
- “provisional enforcement 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.
- [^{F15}(8) Where any act or omission—
- (a) constitutes a contravention of a condition of an appointment under Chapter 1 of this Part or of a condition of a licence under Chapter 1A of this Part or of a statutory or other requirement enforceable under this section; or
 - (b) causes or contributes to a contravention of any such condition or requirement, the only remedies for, or for causing or contributing to, 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, or causing or contributing to, such a contravention.]

Textual Amendments

- F4** Words in s. 18(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(2\)\(a\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. 2 para. 8](#))
- F5** Words in s. 18(1)(a) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(2\)\(b\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. 2 para. 8](#))

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- F6** Words in s. 18(1)(b) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(2)(a)**, 105(3); S.I. 2004/2528, **art. 2(f)** (with art. 4, Sch.)
- F7** S. 18(1A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F8** Words in s. 18(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(4)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F9** Words in s. 18(2)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(4)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F10** S. 18(4)(a)(ii) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(2)(b)**, 105(3); S.I. 2004/2528, **art. 2(f)** (with savings in art. 4)
- F11** S. 18(4)(iii)(iv) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F12** Words in s. 18(6)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(a)(i)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F13** Words in s. 18(6)(a)(i) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(a)(ii)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F14** Words in s. 18(6)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F15** S. 18(8) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(7)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

Modifications etc. (not altering text)

- C3** S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 20(3)**, 225(2).
- C4** S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 197(6)**, 225(2).
- C5** S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 203(5)**, 225(2).
- C6** S. 18: power to extend conferred (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 219(2)(a)**, 225(2).
- C7** S. 18 extended (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 4(2)**.
- C8** S. 18 extended (prosp.) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **ss. 52(3)**, 66
- C9** S. 18 extended (prosp.) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **ss. 25(7)**, 66
- C10** S. 18 extended (20.4.2010) by The Water Supply (Water Quality) Regulations 2010 (S.I. 2010/994), regs. 1(1), **38** (with reg. 1(2)(3))

19 Exceptions to duty to enforce.

- (1) ^[F16]Subject to the Drinking Water (Undertakings) (England and Wales) Regulations 2000]Neither the Secretary of State nor the Director shall be required to make an enforcement order in relation to any company, or to confirm a provisional enforcement order so made, if he is satisfied—
- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
 - ^[F17](aa) that the extent to which the company caused or contributed to, or was likely to cause or contribute to, a contravention was trivial;]
 - (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.

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- ^{F18}[(1A) The Director shall not be required to make an enforcement order, or to confirm a provisional enforcement order, if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.]
- (2) The requirement to comply with an undertaking given for the purposes of subsection (1)(b) above shall be treated as a statutory requirement enforceable under section 18 above—
- (a) by the Secretary of State; or
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (3) Where the Secretary of State or the Director, having notified a company that he is considering the making in relation to the company of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in paragraph (a), [^{F19}(aa)],(b) or (c) of subsection (1) above [^{F20}or, in the case of the Director, is satisfied as mentioned in subsection (1A) above,] he shall—
- (a) serve notice that he is so satisfied on the company;
- ^{F21}(b) publish in such manner as the Secretary of State or the Authority 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—
- (i) a copy of the notice, and
- (ii) where the Secretary of State or the Authority is satisfied as mentioned in paragraph (b) of subsection (1), a summary of the undertaking describing the steps to be taken under it; 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.
- ^{F22}(3A) In a case where notice under subsection (3)(a) falls to be served by the Welsh Ministers, references to the Secretary of State in subsection (3)(b) are to be read as references to the Welsh Ministers.]
- (4) The requirements of subsection (3) above shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Textual Amendments

- F16** Words in s. 19(1) inserted (14.6.2000) by S.I. 2000/1297, **art. 8**
- F17** S. 19(1)(aa) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 5(2)**; S.I. 2005/2714, **art. 3(c)** (with **Sch. para. 8**)
- F18** S. 19(1A) inserted (1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(6)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**
- F19** Words in s. 19(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 5(3)**; S.I. 2005/2714, **art. 3(c)** (with **Sch. para. 8**)
- F20** Words in s. 19(3) inserted (1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(7)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**
- F21** S. 19(3)(b) substituted (20.4.2010) by The Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010 (S.I. 2010/996), regs. 1, **2(2)**
- F22** S. 19(3A) inserted (20.4.2010) by The Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010 (S.I. 2010/996), regs. 1, **2(3)**

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Modifications etc. (not altering text)

- C11** S. 19(1)(b) restricted (14.6.2000) by [S.I. 2000/1297](#), [art. 2](#)
- C12** S. 19(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by [S.I. 1999/672](#), [art. 2](#), [Sch. 1](#)

20 Procedure for enforcement orders.d1>

(1) Before making a final enforcement order [^{F23}under section 18(1) above] or confirming a provisional enforcement order [^{F24}in a case in which section 18(4)(a)(i) or (ii) above applies], 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;
- (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 [^{F25}twenty-one] 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.

[^{F26}(1A) Before making a final enforcement order under section 18(1A) above or confirming a provisional enforcement order in a case in which section 18(4)(a)(iii) or (iv) above applies, the Secretary of State or the Authority shall give notice—

- (a) stating that he or it proposes to make or confirm the order and setting out the effect of the order;
- (b) setting out—
 - (i) the condition or requirement for the purposes of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his or its opinion, cause or contribute to or would cause or contribute to the contravention of that condition or requirement; and
 - (iii) the other facts which, in his or its opinion, justify the making or confirmation of the order; and

- (c) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections 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) [^{F27}or (1A)] 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

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- 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 enforcement order with modifications, or confirm a provisional enforcement 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 [^{F28}twenty-one] 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 an enforcement order or confirming a provisional enforcement 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 an enforcement order, other than an unconfirmed provisional order, 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
- (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.

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- (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 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Textual Amendments

- F23** Words in s. 20(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 6\(2\)\(a\)](#); [S.I. 2005/2714](#), [art. 3\(e\)](#) (with [Sch. para. 8](#))
- F24** Words in s. 20(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 6\(2\)\(b\)](#); [S.I. 2005/2714](#), [art. 3\(e\)](#) (with [Sch. para. 8](#))
- F25** Words in s. 20(1)(c) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. [49\(3\)\(4\)](#), 105(3); [S.I. 2004/2528](#), [art. 2\(f\)](#)
- F26** S. 20(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 6\(3\)](#); [S.I. 2005/2714](#), [art. 3\(e\)](#) (with [Sch. para. 8](#))
- F27** Words in s. 20(2) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 6\(4\)](#); [S.I. 2005/2714](#), [art. 3\(e\)](#) (with [Sch. para. 8](#))
- F28** Words in s. 20(4)(b) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. [49\(3\)\(4\)](#), 105(3); [S.I. 2004/2528](#), [art. 2\(f\)](#)

Modifications etc. (not altering text)

- C13** S. 20(9): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by [S.I. 1999/672](#), [art. 2](#), [Sch. 1](#)

21 Validity of enforcement orders.

- (1) If the company to which an enforcement 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 18 above; or
 - (b) that any of the requirements of section 20 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 an enforcement order shall not be questioned in any legal proceedings whatsoever.

22 Effect of enforcement order.

- (1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.
- (2) Where a duty is owed by virtue of subsection (1) 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.

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- (3) In any proceedings brought against any company in pursuance of subsection (2) 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 68(1)(a) [^{F29}or (1A)(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.
- (4) Without prejudice to any right which any person may have by virtue of subsection (1) above to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement 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.
- (5) In subsection (4) above “the relevant enforcement authority”, in relation to any enforcement 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.

Textual Amendments

F29 Words in s. 22(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 7](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. para. 8](#))

^{F30}Financial penalties

Textual Amendments

F30 Ss. 22A-22F and preceding cross-heading inserted (1.10.2004 for specified purposes and otherwise 1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 48(1), 105(3); [S.I. 2004/2528](#), [art. 2\(e\)](#) (with savings in [art. 4](#)); [S.I. 2005/968](#), [art. 2\(i\)](#) (with savings in [art. 4](#), [Sch. 1](#), 2)

22A Penalties

- (1) Where the Authority is satisfied—
 - (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
 - (i) has contravened or is contravening any condition of the appointment;
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any condition of the licence; or
 - (iii) has failed or is failing to achieve any standard of performance prescribed under section 38(2) or 95(2) below; or
 - (b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—
 - (i) has contravened or is contravening any condition of the licence; or
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment,

the Authority may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

Status: Point in time view as at 01/10/2010.

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- (2) Where the Authority, the Secretary of State or the Assembly is satisfied—
- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
 - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any such requirement; or
 - (b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—
 - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
 - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any such requirement,

he or it may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.
- (3) In a case in which—
- (a) subsection (1) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection, or
 - (b) subsection (2) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection,
- references in the following provisions of this section and sections 22B and 22C below to a contravention include references to causing or contributing to a contravention.
- (4) Before imposing a penalty on a company under subsection (1) or (2) above the Authority, the Secretary of State or the Assembly (the “enforcement authority”) shall give notice—
- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
 - (b) setting out the condition, requirement or standard of performance in question;
 - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and
 - (d) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) Before varying any proposal stated in a notice under subsection (4)(a) above the enforcement authority shall give notice—
- (a) setting out the proposed variation and the reasons for it; and
 - (b) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

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and shall consider any representations or objections which are duly made and not withdrawn.

- (6) As soon as practicable after imposing a penalty, the enforcement authority shall give notice—
- (a) stating that he or it has imposed a penalty on the company and its amount;
 - (b) setting out the condition, requirement or standard of performance in question;
 - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and
 - (d) specifying a date, no earlier than the end of the period of forty-two days from the date of service of the notice on the company, by which the penalty is required to be paid.
- (7) The company may, within twenty-one days of the date of service on it of a notice under subsection (6) above, make an application to the enforcement authority for him or it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this section shall be given—
- (a) by publishing the notice in such manner as the enforcement authority 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;
 - (b) by serving a copy of the notice on the company;
 - (c) by serving a copy of the notice on the Council; and
 - (d) where the notice is given by the Secretary of State or the Assembly, by serving a copy of the notice on the Authority.
- (9) Any sums received by the enforcement authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (10) The power of the enforcement authority to impose a penalty under this section is not exercisable in respect of any contravention or failure before the commencement of this section.
- (11) No penalty imposed by an enforcement authority under this section may exceed 10% of the turnover of the company (determined in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).
- (12) The power of the Secretary of State to make an order under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (13) An enforcement authority shall not impose a penalty under this section where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.

22B Statement of policy with respect to penalties

- (1) Each enforcement authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure an enforcement authority shall have

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regard to his or its statement of policy most recently published at the time when the contravention or failure occurred.

- (3) An enforcement authority may revise his or its statement of policy and where he or it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) An enforcement authority shall undertake such consultation as he or it considers appropriate when preparing or revising his or its statement of policy.

22C Time limits on the imposition of financial penalties

- (1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure later than the end of the period of twelve months from the time of the contravention or failure, unless before the end of that period—
 - (a) the notice under section 22A(4) above relating to the penalty is served on the company under section 22A(8) above; or
 - (b) a notice relating to the contravention or failure is served on the company under section 203(2) below.
- (2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 22A(4) above was served on the company under section 22A(8) above—
 - (a) within three months from the confirmation of the provisional order or the making of the final order; or
 - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

22D Interest and payment of instalments

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under subsection (7) of section 22A above in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the enforcement authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the enforcement authority under that subsection, the enforcement authority may where he or it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

22E Appeals

- (1) If the company on which a penalty is imposed is aggrieved by—
 - (a) the imposition of the penalty;
 - (b) the amount of the penalty; or

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- (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid, the company may make an application to the court under this section.
- (2) An application under subsection (1) above must be made—
- (a) within forty-two days from the date of service on the company of a notice under section 22A(6) above; or
 - (b) where the application relates to a decision of an enforcement authority on an application by the company under section 22A(7) above, within forty-two days from the date the company is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4) below, the court—
- (a) may quash the penalty;
 - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
 - (c) in the case of an application under subsection (1)(c) above, may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
- (a) that the imposition of the penalty was not within the power of the enforcement authority under section 22A above;
 - (b) that any of the requirements of subsections (4) to (6) or (8) of section 22A above have not been complied with in relation to the imposition of the penalty and the interests of the company have been substantially prejudiced by the non-compliance; or
 - (c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.
- (9) In this section “the court” means the High Court.

22F Recovery of penalties

Where a penalty imposed under section 22A(1) or (2) above, or any portion of it, has not been paid by the date on which it is required to be paid and—

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- (a) no application relating to the penalty has been made under section 22E above during the period within which such an application can be made; or
 - (b) an application has been made under that section and determined,
- the enforcement authority may recover from the company, as a civil debt due to him or it, any of the penalty and any interest which has not been paid.]

Special administration orders

23 Meaning and effect of special administration order.

- (1) A special administration order is an order of the High Court made in accordance with section 24 or 25 below in relation to a company holding an appointment under Chapter I of this Part [^{F31}or which is a qualifying licensed water supplier] and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court—
- (a) for the achievement of the purposes of such an order; and
 - (b) in a manner which protects the respective interests of the members and creditors of the company.
- (2) The purposes of a special administration order made in relation to any company [^{F32}holding an appointment under Chapter 1 of this Part] shall be—
- (a) the transfer to another company, or (as respects different parts of the area to which the company's appointment relates, or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and
 - (b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation which replaces the former company as a relevant undertaker).
- [^{F33}(2A) The purposes of a special administration order made in relation to any company which is a qualifying licensed water supplier shall be—
- (a) the transfer to another company or companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that activities relating to the introduction or introductions of water mentioned in subsection (6)(b) below may be properly carried on; and
 - (b) the carrying on of those activities pending the making of the transfer.]

[^{F34}(2B) Where a company is in special administration as a result of an order made on the grounds that the company is or is likely to be unable to pay its debts—

 - (a) a purpose of the special administration order is to rescue the company as a going concern, and
 - (b) the transfer purpose under subsection (2)(a) or (2A)(a) applies only if the special administrator thinks that—
 - (i) it is not likely to be possible to rescue the company as a going concern, or
 - (ii) transfer is likely to secure more effective performance of the functions or activities mentioned in subsection (2)(a) or (2A)(a).

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- (2C) Where subsection (2B) applies, subsections (2)(b) and (2A)(b) have effect as if they referred to carrying out functions, or carrying on activities, pending rescue or transfer.
- (2D) For the purpose of rescuing the company as a going concern a special administrator may propose—
- (a) a company voluntary arrangement under Part 1 of the Insolvency Act 1986, or
 - (b) a compromise or arrangement in accordance with Part 26 of the Companies Act 2006.
- (2E) The Secretary of State may by regulations made by statutory instrument—
- (a) modify a provision of the Insolvency Act 1986 or the Companies Act 2006 in respect of the arrangements and compromises mentioned in subsection (2D) in so far as they apply to a company which is or has been in special administration;
 - (b) make other supplemental provision about those arrangements and compromises (which may, in particular, apply or modify the effect of an enactment about insolvency or companies).
- (2F) Provision under subsection (2E)(a) or (b) may, in particular, confer a function on—
- (a) the Secretary of State,
 - (b) the Welsh Ministers, or
 - (c) the Authority.
- (2G) Regulations under subsection (2E) may not be made unless—
- (a) the Welsh Ministers have consented to the making of the regulations, and
 - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]

[^{F35}(2H) A transfer under subsection (2) or (2A) may be effected by—

 - (a) transferring all or part of the company's undertaking to a wholly-owned subsidiary of the company, and
 - (b) then transferring securities in the subsidiary to another company.]

[^{F36}(3) Schedule B1 to the Insolvency Act 1986 (administration) applies to special administration (subject to regulations under subsection (3A)).

(3A) The Secretary of State may make regulations about special administration which—

 - (a) apply (with or without modification) an insolvency provision;
 - (b) disapply an insolvency provision;
 - (c) modify the effect of an insolvency provision;
 - (d) make provision similar to, and in place of, an insolvency provision.

(3B) In subsection (3A) “insolvency provision” means a provision of the Insolvency Act 1986 or another enactment about insolvency (including (i) a provision about administration, (ii) a provision about consequences of insolvency, and (iii) a provision conferring power to make rules).

(3C) A reference in an enactment to Part II of the Insolvency Act 1986 includes a reference to that Part as applied by or under this section (subject to regulations under subsection (3A)).

(3D) Regulations under subsection (3A) shall be made by statutory instrument and may not be made unless—

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- (a) the Welsh Ministers have consented to the making of the regulations, and
 - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]
- (4) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which
- [^{F37}(a) a company is replaced by another as a relevant undertaker without an appointment or variation under Chapter 1 of this Part; or
 - (b) a company carries on activities relating to the introduction or introductions of water mentioned in subsection (6)(b) below formerly carried on by another company,
- in pursuance of a special administration order.]
- (5) In this section “business” and “property” have the same meanings as in the ^{M2}Insolvency Act 1986.
- [^{F38}(6) For the purposes of this section, sections 24 to 26 below and Schedule 2 to this Act, a licensed water supplier is a qualifying licensed water supplier if—
- (a) it is the holder of a combined licence (within the meaning of Chapter 1A of this Part); and
 - (b) the introduction of water by it which is permitted under section 66B or 66C below is designated as a strategic supply under section 66G below or the introductions of water by it which are so permitted are designated as a collective strategic supply under section 66H below.]

Textual Amendments

- F31** Words in s. 23(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 8(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F32** Words in s. 23(2) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 8(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F33** S. 23(2A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 8(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F34** S. 23(2B)-(2G) inserted (1.10.2010 for specified purposes, 12.1.2024 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 3** (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2024/35, art. 2(b)
- F35** S. 23(2H) inserted (1.10.2010 for specified purposes, 12.1.2024 in so far as not already in force) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 5(1)** (with s. 49(1)(6), Sch. 5 para. 5(4)); S.I. 2010/2169, art. 4; S.I. 2024/35, art. 2(b)
- F36** S. 23(3)-(3D) substituted for s. 23(3) (1.10.2010 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 5 para. 6(1)** (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.
- F37** Words in s. 23(4) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 8(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F38** S. 23(6) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 8(6)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)

Modifications etc. (not altering text)

- C14** S. 23(1) restricted (15.11.1999) by [S.I. 1999/2787](#), **art. 4**

Marginal Citations

- M2** 1986 c. 45.

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24 Special administration orders made on special petitions.

(1) If, on an application made to the High Court by petition presented—

- (a) by the Secretary of State; or
- (b) with the consent of the Secretary of State, by the Director,

that Court is satisfied in relation to any company which holds an appointment under Chapter I of this Part that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.

[^{F39}(1A) If on an application made to the High Court by petition presented—

- (a) by the Secretary of State (after consulting the Assembly); or
- (b) with the consent of the Secretary of State (after consulting the Assembly), the Authority,

the Court is satisfied in relation to any company which is a qualifying licensed water supplier that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.]

(2) The grounds mentioned in [^{F40}subsections (1) and (1A)] above are, in relation to any company—

- (a) that there has been, is or is likely to be such a contravention by the company of any principal duty, not being a contravention in respect of which a notice has been served under subsection (3) of section 19 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment [^{F41}or licence];
- (b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—
 - (i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) above; and
 - (ii) if it is a provisional enforcement order, has been confirmed,as is serious enough to make it inappropriate for the company to continue to hold its appointment [^{F41}or licence];

[^{F42}(bb) in the case of a company which is a qualifying licensed water supplier, that—

- (i) action taken by the company has caused a contravention by a water undertaker of any principal duty; and
- (ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;]
- (c) that the company is or is likely to be unable to pay its debts;
- (d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 25 below, for him to petition for the winding up of the company under [^{F43}section 440 of the Companies Act 1985][^{F43}section 124A of the Insolvency Act 1986] (petition by the Secretary of State following inspectors' report etc.), it would be just and equitable, as mentioned in that section, for the company to be wound up if it did not hold an appointment under Chapter I of this Part [^{F44}or was not a qualifying licensed water supplier] ; or
- (e) [^{F45}in the case of a company holding an appointment under Chapter 1 of this Part,] that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or the Director to be necessary by reason of, or in connection with, a proposal for the making by virtue of

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section 7(4)(c) above of any appointment or variation replacing a company as a relevant undertaker.

- (3) Notice of any petition under this section for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the ^{M3}Insolvency Act 1986 (“the 1986 Act”); and no such petition shall be withdrawn except with the leave of the High Court.
- [^{F46}(4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a special administration order in relation to any company as they apply on the hearing of a petition for an administration order.]
- [^{F46}(5) Subsections (1), (2) and (4) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a special administration order in relation to any company as if—
- (a) the reference in subsection (1) to an administration order were a reference to a special administration order;
 - (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and
 - (c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 18 above.]
- (6) For the purposes of this section a company is unable to pay its debts if—
- (a) it is a limited company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
 - (b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).
- [^{F47}(7) In this section “principal duty” means—
- (a) in relation to a company holding an appointment under Chapter 1 of this Part, a requirement imposed on the company by section 37 or 94 below;
 - (b) in relation to a company which is a qualifying licensed water supplier, any condition of its licence or any statutory requirement imposed on it in consequence of its licence.]

Textual Amendments

- F39** S. 24(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(2\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F40** Words in s. 24(2) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(a\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F41** Words in s. 24(2)(a)(b) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(b\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F42** S. 24(2)(bb) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(c\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F43** Words in s. 24(2)(d) substituted (1.10.2010 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 5 para. 6\(4\)](#) (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.
- F44** Words in s. 24(2)(d) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(d\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))

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- F45** Words in s. 24(2)(e) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(e\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F46** S. 24(4)(5) ceases to have effect (1.10.2010 for specified purposes) by virtue of [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 5 para. 6\(2\)](#) (with s. 49(1)(6)); S.I. 2010/2169, art. 4, [Sch.](#)
- F47** S. 24(7) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(4\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))

Marginal Citations

- M3** 1986 c. 45.

25 Power to make special administration order on winding-up petition.

On an application made to any court for the winding up of a company which holds an appointment under Chapter I of this Part [^{F48}or is a qualifying licensed water supplier]—

- (a) the court shall not make a winding-up order in relation to the company; but
- (b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment [^{F49}or a qualifying licensed water supplier], it shall, instead, make a special administration order in relation to the company.

Textual Amendments

- F48** Words in s. 25 inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 10\(a\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F49** Words in s. 25(b) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 10\(b\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))

Restrictions on voluntary winding up and insolvency proceedings

26 Restrictions on voluntary winding up and insolvency proceedings.

- (1) Where a company holds an appointment under Chapter I of this Part [^{F50}or is a qualifying licensed water supplier]—
 - (a) the company shall not be wound up voluntarily;
 - (b) no administration order shall be made in relation to the company under Part II of the ^{M4}Insolvency Act 1986; and
 - (c) no step shall be taken by any person to enforce any security over the company's property except where that person has served fourteen days' notice of his intention to take that step on the Secretary of State and on the Director.
- (2) In this section “security” and “property” have the same meanings as in Parts I to VII of the ^{M5}Insolvency Act 1986.

Textual Amendments

- F50** Words in s. 26 inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 11](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))

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Marginal Citations

M4 1986 c. 45.

M5 1986 c. 45.

CHAPTER III

PROTECTION OF CUSTOMERS ETC..

General provisions

27 General duty of Director to keep matters under review.

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so, to keep under review the carrying on both in England and Wales and elsewhere of activities connected with the matters in relation to which
 - [^{F51}(a) water undertakers or sewerage undertakers carry out functions; and
 - (b) licensed water suppliers carry on activities authorised by their licences.]
- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time to do so, to collect information with respect to—
 - (a) the carrying out by companies appointed under Chapter I of this Part of the functions of relevant undertakers; or
 - [^{F52}(aa) the carrying on by companies holding licences under Chapter 1A of this Part of the activities authorised by their licences; or]
 - (b) any [^{F53}company mentioned in paragraph (a) or (aa) above] ,
with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on him by or under any enactment.
- (3) The Secretary of State may give general directions indicating—
 - (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1) or (2) above; and
 - (b) considerations to which, in cases where it appears to the Director that any of his powers under Parts II to V and VII of this Act are exercisable, he should have particular regard in determining whether to exercise those powers;
 and it shall be the duty of the Director to comply with any such directions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or [^{F54}the OFT] to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter relating to—
 - (a) the functions of either description of relevant undertaker; or
 - (b) the carrying out of any such functions by a company holding an appointment under Chapter I of this Part [^{F55} or
 - (c) the activities authorised by retail licences or combined licences (within the meanings of Chapter 1A of this Part); or
 - (d) the carrying on of any such activities by a company holding any such licence.]

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Textual Amendments

- F51** S. 27(1)(a)(b) substituted (1.12.2005) for words by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(2\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F52** S. 27(2)(aa) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(3\)\(a\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F53** Words in s. 27(2)(b) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(3\)\(b\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F54** Words in s. 27(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 25\(7\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with transitional and transitory provisions in [art. 3](#))
- F55** S. 27(4)(c)(d) and preceding word inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(4\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))

Modifications etc. (not altering text)

- C15** S. 27(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by [S.I. 1999/672, art. 2, Sch. 1](#)

^{f56}*The Consumer Council for Water*

Textual Amendments

- F56** Ss. 27A, 27B and preceding cross-heading inserted (1.8.2005 for specified provisions and purposes and 1.10.2005 for further specified provisions and purposes and 1.4.2006 otherwise) by [Water Act 2003 \(c. 37\)](#), ss. [35\(1\)](#), 105(3); [S.I. 2005/968, art. 3\(a\)](#); [S.I. 2005/2714, arts. 2\(a\), 4\(b\)](#) (with [Sch. para. 8](#))

27A Establishment of the Council and committees

- (1) There shall be a body corporate to be known as the Consumer Council for Water (in this Act referred to as “the Council”) for the purpose of carrying out the functions of the Council under this Act.
- (2) In Welsh the Council may be known as “Cyngor Defnyddwyr Dŵr”.
- (3) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (4) The Council shall establish such committees of the Council—
 - (a) as the Assembly may direct, for relevant undertakers whose areas are wholly or mainly in Wales; and
 - (b) as the Secretary of State may direct, for other relevant undertakers.
- (5) A direction under subsection (4) above may provide for the allocation of each relevant undertaker to a committee specified in the direction.
- (6) The power to give a direction under subsection (4) above may not be exercised after the end of the period of six months beginning with the commencement of section 35 of the Water Act 2003.
- (7) After the end of the period mentioned in subsection (6) above the Council may (subject to paragraph 11 of Schedule 3A to this Act)—

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- (a) establish such committees for relevant undertakers as it considers appropriate; or
 - (b) alter the allocation of a relevant undertaker to a committee established under this section.
- (8) The Council shall ensure that each relevant undertaker is allocated to a committee established under this section.
- (9) A committee established under this section is referred to in this Act as a “regional committee”.
- (10) The purposes of a regional committee shall be—
- (a) the provision of advice and information to the Council on consumer matters affecting the areas of the relevant undertakers allocated to that committee;
 - (b) such other purposes as the Council may determine.
- (11) The provisions of Schedule 3A to this Act (which makes further provision about the Council and regional committees) shall have effect.
- (12) The Council shall exercise and perform its powers and duties in the manner which it considers is best calculated to contribute to the achievement of sustainable development.
- (13) In this Chapter—
- “consumers” includes both existing and future consumers;
 - “the interests of consumers” means the interests of consumers in relation to—
- (a) the supply of water by means of a water undertaker’s supply system to premises either by water undertakers or by licensed water suppliers acting in their capacity as such; and
 - (b) the provision of sewerage services by sewerage undertakers; and
- “consumer matter” means any matter connected with the interests of consumers.

27B Co-operation between Council and other authorities

- (1) This section imposes duties on—
- (a) the Authority and the Council;
 - (b) the Council and the Secretary of State; and
 - (c) the Council and the Assembly.
- (2) It shall be the duty of the bodies mentioned in each paragraph of subsection (1) above to make arrangements with a view to securing—
- (a) co-operation and the exchange of information between them; and
 - (b) the consistent treatment of matters which affect both of them.
- (3) As soon as practicable after agreement is reached on any arrangements required by this section, the parties shall prepare a memorandum setting them out.
- (4) Arrangements under this section shall be kept under review by the parties.
- (5) As soon as practicable after agreement is reached on any changes to arrangements under this section, the parties shall revise their memorandum.

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- (6) Parties to arrangements required by this section shall send a copy of their memorandum, and any revised memorandum, to each other person mentioned in subsection (1) above who is not a party to the arrangements set out in the memorandum (or revised memorandum).
- (7) The Secretary of State shall lay a copy of every memorandum or revised memorandum under this section before each House of Parliament.]

f^{F57} General functions of the Council

Textual Amendments

F57 Ss. 27C-27G and preceding cross-heading inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 43(1), 105(3)**; [S.I. 2005/2714](#), **art. 2(c)** (with [Sch. 2 para. 8](#))

27C The interests of consumers

- (1) In considering the interests of consumers, the Council shall have regard to the interests of—
 - (a) individuals who are disabled or chronically sick;
 - (b) individuals of pensionable age;
 - (c) individuals with low incomes;
 - (d) individuals residing in rural areas; and
 - (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are not eligible to be supplied by a licensed water supplier,but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.
- (2) For the purposes of subsection (1) above, premises are not eligible to be supplied by a licensed water supplier if—
 - (a) they are household premises (as defined in section 17C above); or
 - (b) the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection.

27D Acquisition and review of information

The Council shall have the function of obtaining and keeping under review—

- (a) information about consumer matters (including matters affecting consumers in different areas); and
- (b) information about the views of consumers on such matters (including the views of consumers in different areas).

27E Provision of advice and information to public authorities

- (1) The Council shall have the function of—
 - (a) making proposals, or providing advice and information, about consumer matters (including matters affecting consumers in different areas); and

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- (b) representing the views of consumers on such matters (including the views of consumers in different areas),
- to public authorities, companies holding an appointment under Chapter 1 of this Part, licensed water suppliers and other persons whose activities may affect the interests of consumers.
- (2) Subject to subsection (7) below, information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be disclosed if—
- (a) the individual or body has consented to the disclosure;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to disclose any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
- (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its disclosure;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) Subject to subsection (7) below, the Council shall not in the exercise of its function under this section disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) Subsections (2) to (5) above do not apply to a disclosure of information which is made to the Authority, the Secretary of State, the Assembly, the Competition Commission or any other public authority.
- (8) The disclosure by the Council of information in the exercise of its function under this section does not contravene section 206 below (restriction on disclosure of information).

27F Provision of information to consumers

- (1) The Council has the function of providing information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.
- (2) That function may be exercised by—
 - (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or

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- (b) furnishing information to any consumer (whether in response to a request or otherwise).
- (3) Information may only be disclosed in the exercise of that function if it is information that is available to members of the public from some other source.
- (4) The Council shall maintain at least one office in each of England and Wales at which consumers may apply for information.

27G Power to publish information and advice about consumer matters

- (1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
 - (a) the individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
 - (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication of information under this section does not contravene section 206 below (restriction on disclosure of information).

1^{F58} 27H Provision of information to the Council

- (1) The Council may direct—
 - (a) the Authority;

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- (b) a company holding an appointment under Chapter 1 of this Part; or
 - (c) a licensed water supplier,
- to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.
- (2) A body to whom a direction under this section is given shall, if the information specified or described in the direction is in its possession, comply with the direction as soon as reasonably practicable.
 - (3) Before giving a direction under this section and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body to whom the direction is given.
 - (4) If a body to whom a direction under this section is given fails to comply with the direction it shall, if so required by the Council, give notice to the Council of the reasons for its failure.

Textual Amendments

F58 Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44, 105(3)**; [S.I. 2005/2714](#), **art. 2(d)** (with [Sch. 2 para. 8](#))

27I Publication of notice of reasons

- (1) Subject to the following provisions of this section, the Council may publish a notice given to it under section 27H(4) above.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under subsection (1) above unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
 - (a) that individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
 - (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

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- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).

Textual Amendments

F58 Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44, 105(3)**; S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))

27J Provision of information by the Council

- (1) Any of—
 - (a) the Authority;
 - (b) the Secretary of State; or
 - (c) the Assembly,may direct the Council to supply to him or it, in such form as he or it may reasonably specify, such information specified or described in the direction as he or it may require for the purpose of exercising his or its functions.
- (2) The Council shall, if the information specified or described in the direction is in its possession, comply with a direction under this section as soon as reasonably practicable.
- (3) Where the Council fails to comply with a direction given under subsection (1) above it must give to the person who gave the direction notice of its reason for the failure, and that person may publish that notice in such manner as he considers appropriate.
- (4) A person publishing a notice under this section shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

Textual Amendments

F58 Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44, 105(3)**; S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))

27K Sections 27H to 27J: supplementary

- (1) The Secretary of State may make regulations prescribing—
 - (a) descriptions of information which a person to whom a direction is given under section 27H or 27J above may refuse to supply; or
 - (b) circumstances in which such a person may refuse to comply with a direction given under either of those sections.

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- (2) The Council may, if no person is prescribed for the purpose under subsection (3) below, refer a failure by a company holding an appointment or a licensed water supplier to comply with a direction under section 27H above to the Authority.
- (3) The Secretary of State may make regulations for the purpose of enabling a failure to comply with a direction under section 27H or 27J above to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.
- (4) A person to whom such a failure is referred (whether under subsection (2) above or regulations under subsection (3) above) shall—
 - (a) consider any representations made by either party;
 - (b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
 - (c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.
- (5) The duty of a company holding an appointment and a licensed water supplier to comply with an order under this section shall be enforceable by the Authority under section 18 above.
- (6) A notice under subsection (4) above may be published by either party to the reference.
- (7) Subsections (2) to (7) of section 27I above apply to the publication of a notice under this section as they apply to the publication of a notice given to the Council under section 27H(4) above.]

Textual Amendments

F58 Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 44, 105(3); S.I. 2005/2714, [art. 2\(d\)](#) (with [Sch. 2 para. 8](#))

^{X1}28 Customer service committees.

F59

Editorial Information

X1 The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

F59 S. 28 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 35(4), 105(3), [Sch. 9 Pt. 2](#); S. I. 2005/2714, [art. 2\(a\)\(m\)](#)

^{X2}[^{F60}29 Consumer complaints

- (1) This section applies to a complaint which any person (“the complainant”) has against a relevant undertaker or a licensed water supplier in relation to any matter connected

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- with the functions of that undertaker or the services provided by that licensed water supplier.
- (2) Where a complaint to which this section applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsections (3) and (8) below) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (9) below.
 - (3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under section 181 below, the Council shall, instead of investigating the matter to which it relates, refer the complaint to the Authority.
 - (4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under section 18 or 22A above is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.
 - (5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence, the Council shall refer the matter—
 - (a) to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales or to services provided by a licensed water supplier using the supply system of a water undertaker whose area is wholly or mainly in Wales; or
 - (b) to the Secretary of State, in any other case.
 - (6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Act, the Council shall, if the complainant consents, refer the matter to the Authority.
 - (7) A referral under subsection (6) above shall have effect for the purposes of section 30A below as if it were a referral by the complainant of a dispute for determination by the Authority.
 - (8) The Council is not required to investigate any matter if it appears to the Council that—
 - (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker or the licensed water supplier;
 - (b) the relevant undertaker or the licensed water supplier has not been given a reasonable opportunity to deal with the complaint; or
 - (c) in a case mentioned in subsection (4) or (5) above or (where the complainant does not consent to the matter being referred to the Authority) subsection (6) above, it is inappropriate to do so.
 - (9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the complainant to the relevant undertaker or the licensed water supplier about anything to which the complaint relates.
 - (10) After investigating a complaint the Council may make a report to the Authority, the Secretary of State or the Assembly.
 - (11) A report under subsection (10) above may include information about—
 - (a) any representations made by the Council under subsection (9) above; and

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- (b) the response of the relevant undertaker or the licensed water supplier to the complaint or any such representations.
- (12) No report under subsection (10) above or information about a complaint referred to the Council under this section, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority, the Secretary of State or the Assembly in the exercise of any power under this Act without the consent of the complainant.
- (13) Where a representation made to the Authority, the Secretary of State or the Assembly about any matter (other than a representation appearing to the person to whom it is made to be frivolous or vexatious) appears to that person—
- (a) to be about a matter which is or amounts to a complaint to which this section applies (other than one which, in the case of the Authority, it is its duty to investigate under section 181 below); and
 - (b) to have been made by or on behalf of the complainant,
- that person shall refer the matter to the Council.]

Editorial Information

- X2** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F60** S. 29 substituted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 46(1), 105(3)**; [S.I. 2005/2714](#), **art. 2(f)** (with [Sch. paras. 3, 8](#))

^{F61}29A **Power of Council to investigate other matters**

- (1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.
- (2) Before undertaking an investigation under this section the Council shall consult the Authority, the Secretary of State and the Assembly.
- (3) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the OFT, the Assembly or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.
- (4) Subject to subsection (5) below, the Council may—
 - (a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and
 - (b) publish any such report in such manner as the Council thinks appropriate.
- (5) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—
 - (a) shall not be included in a report which is to be sent to any person under subsection (4)(a) above, unless one or more of paragraphs (a) to (c) of subsection (6) below applies; and

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- (b) shall be excluded from any such report which is to be published under subsection (4)(b) above, unless one or more of paragraphs (a) to (c) of subsection (7) below applies.
- (6) Information relating to a particular individual or body may be included in a report to be sent under subsection (4)(a) above if—
 - (a) that individual or body has consented to the disclosure;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (7) Information relating to a particular individual or body may be included in a report to be published under subsection (4)(b) above if—
 - (a) that individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (8) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (6)(c) or (7)(c) above, the Council shall—
 - (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (6)(c) or (7)(c) above to the information or as to the desirability or otherwise of its inclusion in the report;and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (9) The Council shall not include in any report to be sent under subsection (4)(a) above or published under subsection (4)(b) above any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (10) In considering whether information relates to any matter as mentioned in subsection (9) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.]

Textual Amendments

F61 S. 29A inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 47**, 105(3); [S.I. 2005/2714](#), **art. 2(g)** (with [Sch. 2 para. 8](#))

^{X3}**30** **Duties of Director with respect to complaints**

^{F62}]

Status: Point in time view as at 01/10/2010.

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Editorial Information

- X3** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F62** S. 30 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 46(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/2714, **art. 2(f)(m)** (with [Sch. paras. 3, 8](#))

^{F63}Further functions of Authority

Textual Amendments

- F63** Ss. 30ZA, 30ZB and preceding cross-heading inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 43(2), 105(3)**; S.I. 2005/2714, **art. 2(c)** (with [Sch. 2 para. 8](#))

30ZA Duty to consult Council

- (1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—
 - (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
 - (b) the Authority considers that it would be clearly inappropriate to consult the Council.
- (2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

30ZB Copies of notices

Where the Authority is required by any provision of this Act to publish a notice or any other document, it shall send a copy of the document to the Council.

^{x4} 30A ^{F64}Determination of disputes by the Director.

- (1) In this section “relevant dispute” means a dispute which, by virtue of any provision of this Act, may be referred to the Director for determination under this section.
- (2) The practice and procedure to be followed in connection with the reference to the Director of any relevant dispute shall be such as he considers appropriate.
- (3) Where the Director determines any dispute under this section he shall give his reasons for reaching his decision with respect to the dispute.
- (4) On making a determination under this section the Director may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Director) as he considers appropriate.
- (5) A determination under this section—

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- (a) shall be final; and
 - (b) shall be enforceable as if it were a judgment of a county court, in so far as it includes such provision as to costs or expenses as is mentioned in subsection (4) above.
- (6) The Director shall not determine any relevant dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.
- (7) In including in any determination under this section any provision as to costs or expenses, the Director shall have regard to the conduct and means of the parties and any other relevant circumstances.]]

Editorial Information

- X4** The insertion of the new cross-heading "Further functions of Authority" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

Textual Amendments

- F64** S. 30A inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s.34; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt.II

Provisions with respect to competition

31 Functions of Director with respect to competition.

- (1) ^{F65}
- [^{F66}(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the OFT.
- (2A) This subsection applies to the functions of the OFT under Part 4 of the 2002 Act (other than sections 166 and 171) so far as relating to commercial activities connected with the supply of water or the provision of sewerage services.]
- [^{F67}(3) The Director shall be entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to —
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
 - (b) conduct of the kind mentioned in section 18(1) of that Act,
 - (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
 - (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,
- which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.]
- [^{F68}(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the 2002 Act to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references

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to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).]

^{F69}[(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to [^{F70}the OFT] are to be read as including a reference to the Director ([^{F71}except in sections 31D(1) to (6), 38(1) to (6)] , 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

[^{F72}(5) Before the OFT or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(6) Neither the OFT nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]

(7) It shall be the duty of the Director, for the purpose of assisting the [^{F73}Competition Commission] in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) ^{F74}. . . above, to give to the Commission—

(a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is 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 shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

(8) If any question arises as to whether subsection (2) or (3) above ^{F75}. . . applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

(a) [^{F76}Part 4 of the 2002 Act]; or

^{F77}[(b) Part I of the Competition Act 1998 ([^{F78}other than sections 31D(1) to (6), 38(1) to (6)] and 51),]

by or in relation to the Director on the ground that it should have been done by or in relation to [^{F79}the OFT] .

[^{F80}(8A) Section 117 of the 2002 Act (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the OFT included references to the Director.]

(9) ^{F81}

Textual Amendments

F65 S. 31(1) ceases to have effect (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, Sch. 25 para. (8) (a), Sch. 26; [S.I. 2003/766](#), **art. 2**, Sch. (with transitional and transitory provisions in art. 3)

F66 S. 31(2)(2A) substituted (20.6.2003) for s. 31(2) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, **Sch. 9 para. 19(2)**; [S.I. 2003/ 1397](#), {art. 2(1)}, Sch.

F67 S. 31(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, **Sch. 2 para.4(2)(a)**

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- F68** S. 31(4) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(3)**; S.I. 2003/1397, {art. 2(1)}, Sch.
- F69** S. 31(4A) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(8)** (with s. 73); S.I. 1997/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F70** Words in s. 31(4A) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(8)(c)**; S.I. 2003/766, **art. 2, Sch.** (with transitional and transitory provisions in art. 3)
- F71** Words in s. 31(4A) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), **reg. 5, Sch. 2 para. 4(2)(b)**
- F72** S. 31(5)(6) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(4)**; S.I. 2003/1397, art. 2(1), Sch.
- F73** Words in s. 31(7) substituted (1.4.1999) by S.I. 1999/506, **art. 30(b)**
- F74** Words in s. 31(7) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), **Sch. 10 Pt. II para. 5(5)(11), Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F75** Words in s. 31(8) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(1), 178, 179, Sch. 9 para. 19(5)(a), **Sch. 26**; S.I. 2003/1397, **art. 2(1), Sch.** (with savings in art. 10)
- F76** Words in s. 31(8) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(5)(b)**; S.I. 2003/1397, art. 2(1), Sch.
- F77** S. 31(8)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(12)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F78** Words in s. 31(8)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), **reg. 5, Sch. 2 para. 4(2)(c)**
- F79** Words in s. 31(8) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(8)(d)**; S.I. 2003/766, **art. 2, Sch.** (with transitional and transitory provisions in art. 3)
- F80** S. 31(8A) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(6)**; S.I. 2003/1397, art. 2(1), Sch.
- F81** S. 31(9) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(1), 278, 279, Sch. 9 para. 19(7), **Sch. 26**; S.I. 2003/1397, **art. 2(1), Sch.** (with savings in art. 10)

Modifications etc. (not altering text)

- C16** S. 31(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 para. 5(1)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
S. 31(3) amended (1.3.2000) by 1998 c. 41, ss. 54, 66(5), **Sch. 10 Pt. I para. 5(1)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**

[^{F82}32 Duty to refer merger of water or sewerage undertakings.

Subject to section 33 below, it shall be the duty of the OFT to make a merger reference to the Competition Commission if the OFT believes that it is or may be the case—

- (a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or
- (b) that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.]

Textual Amendments

- F82** Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), **ss. 70(1), 279**; S.I. 2004/3233, **art. 2, Sch.** (with transitional provisions and savings in arts. 3-5)

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[^{F83}33 Exclusion of small mergers from duty to make reference.

- (1) The OFT shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the OFT—
 - (a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or
 - (b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.
- (2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—
 - (a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or
 - (b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.
- (3) For the purposes of subsection (1)(b) above—
 - (a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and
 - (b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.
- (4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.
- (5) Regulations under subsection (4) above may, in particular, make provision as to—
 - (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and
 - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the OFT to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).
- (7) The Secretary of State may by regulations amend subsection (1) above so as—
 - (a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or
 - (b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.
- (8) Regulations under subsection (7) above—
 - (a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and

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- (b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.
- (9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.]

Textual Amendments

F83 Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), ss. 70(1), 279; S.I. 2004/3233, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)

[^{F84}34 Application of provisions of Enterprise Act 2002

The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.]

Textual Amendments

F84 Ss. 32-35 substituted (29.12.2004) by Enterprise Act 2002 (c. 40), ss. 70(1), 279; S.I. 2004/3233, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)

[^{F85}35 Construction of merger provisions.

- (1) In this Chapter (including Schedule 4ZA)—
“enterprise” has the same meaning as in Part 3 of the 2002 Act; and
“water enterprise” means an enterprise carried on by a [^{F86}relevant undertaker].
- (2) References in this Chapter (including Schedule 4ZA), in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part 3 of the 2002 Act, to be distinct enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.
- (3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the OFT or the Secretary of State, in a case in which, or to any extent to which, the OFT is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.
- (4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.
- (5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the OFT is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.]

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Textual Amendments

- F85** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, Sch. (with transitional provisions and savings in [arts. 3-5](#))
- F86** S. 35(1): words in definition of "water enterprise" substituted (29.12.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 101(1)**, 105(3), **Sch. 7 para. 27(2)**; S.I. 2004/2528, **art. 3** (with savings in [art. 4](#))

f⁸⁷ Disclosure of arrangements for remuneration

Textual Amendments

- F87** S. 35A and preceding cross-heading inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 50**, 105(3); S.I. 2004/2528, **art. 2(g)**

35A Remuneration and standards of performance

- (1) This section applies to any company holding an appointment under Chapter 1 of this Part.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
 - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3) below; and
 - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.
- (4) A description under subsection (2)(b) above must include in particular—
 - (a) a statement of when the arrangements were made;
 - (b) a description of the standards of performance in question;
 - (c) an explanation of the means by which the standards of performance are assessed; and
 - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) above must also state—
 - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3) above; or
 - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,
 and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) above must—
 - (a) include in particular the matters listed in subsection (4)(a), (b) and (c) above; and

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- (b) where the arrangements described are different from any arrangements described under subsection (2)(b) above, state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) above must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2) above—
 - (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
 - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
 - “remuneration” in relation to a director of a company—
 - (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
 - (b) includes remuneration in respect of any of his services while a director of the company;
 - “standards of performance”, in relation to any company, include any standards which are—
 - (a) set by or under any conditions of the company’s appointment under Chapter 1 of this Part;
 - (b) contained in or prescribed by regulations made under section 38(1)(b) or (2) or section 95(1)(b) or (2) below; or
 - (c) set or agreed to by the company.
- (11) Any requirement imposed by this section shall be treated as a statutory requirement enforceable under section 18 above by the Authority.]

CHAPTER IV

INTERPRETATION OF PART II

36 Interpretation of Part II.

- (1) In this Part—
 - [^{F88}“the 1973 Act” means the ^{M6}Fair Trading Act 1973; and]
 - “the 1980 Act” means the ^{M7}Competition Act 1980.
 - [^{F89}“the 2002 Act” means the Enterprise Act 2002;]
- (2) References in this Part to an appointment or variation replacing a company as a relevant undertaker are references to the following, that is to say—
 - (a) the appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker; or

Status: Point in time view as at 01/10/2010.

Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 21 May 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)

- (b) a variation by virtue of which the area for which a company holds an appointment under Chapter I of this Part is modified so as to include the whole or any part of an area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker.
- (3) For the purposes of this Part premises in a part of an area are served by a company holding an appointment under Chapter I of this Part—
- (a) in relation to an appointment or variation by virtue of which that company would be replaced as the water undertaker for that part of that area, if those premises—
- (i) are supplied with water by means of a connection with a distribution main of that company; or
- F90(ii)
- and
- (b) in relation to an appointment or variation by virtue of which that company would be replaced as the sewerage undertaker for that part of that area, if those premises—
- (i) are drained by means of a relevant sewer [F91 or drain] ; or
- F92(ii)
- (4) In this section—
- “distribution main” means a water main that is not a trunk main; and
- [F93“relevant sewer or drain”, in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following, that is to say—
- (a) a public sewer or lateral drain vested in that company;
- (b) a sewer or lateral drain in relation to which that company has made a declaration of vesting under section 102 below which has not yet taken effect;
- (c) a sewer or lateral drain in relation to which that company has entered into an agreement under section 104 below.]

Textual Amendments

- F88** Words in s. 36(1) ceased to have effect (29.12.2004) and repealed (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 278, 279, [Sch. 9 para. 8\(a\)](#), Sch. 26; S.I. 2004/3233, [art. 2](#), Sch. (with arts. 3-5)
- F89** Words in s. 36(1) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, [Sch. 9 para. 8\(b\)](#); S.I. 2003/1397, [art. 2\(1\)](#), Sch.
- F90** S. 36(3)(a)(ii) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 40(5)(a), 56(7), [Sch. 2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F91** Words in s. 36(3)(b)(i) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 97\(2\)\(a\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [art. 6](#), Sch. 3)
- F92** S. 36(3)(b)(ii) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 40(5)(b), 56(7), [Sch. 2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F93** S. 36(4): definition substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 97\(2\)\(b\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [art. 6](#), Sch. 3)

Marginal Citations

- M6** 1973 c. 41.

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M7 1980 c. 21.

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