



# 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 <sup>F1</sup>or a sewerage undertaker] unless it is a limited company <sup>F2</sup>...
- <sup>F3</sup>(5A) A company shall not be appointed to be a relevant undertaker if it is <sup>F4</sup>a water supply licensee or sewerage licensee.]
- (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.

#### Textual Amendments

- F1** Words in s. 6(5) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(b)(i)**
- F2** Words in s. 6(5) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(b)(ii)**
- F3** S. 6(5A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 3**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F4** Words in s. 6(5A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 6**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(d)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

#### Modifications etc. (not altering text)

- C1** S. 6 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 2** (with reg. 1(1)(c))

## 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—

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- (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 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 <sup>F5</sup>company;
- (bb) the appointment or variation relates only to parts of that area and the conditions mentioned in subsection (5) below are satisfied in relation to each of the premises in those parts which are 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.
- <sup>F6</sup>[(5) The conditions are that—
- [ the premises are, or are likely to be, supplied with not less than the following
- <sup>F7</sup>(a) quantity of water in any period of twelve months:
- (i) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;
- (ii) in all other cases, [<sup>F8</sup>50 megalitres] ; and]]
- (b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.
- (6) The Secretary of State may, after consulting the Director, make regulations amending subsection (5)(a) above by substituting, for the quantity of water for the time being specified there, such smaller quantity as he considers appropriate.

#### Textual Amendments

- F5** Words and para. (bb) in s. 7(4) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 40\(1\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F6** S. 7(5)(6) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 40\(2\)](#): Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F7** S. 7(5)(a) substituted (17.8.2000) by [S.I. 2000/1842, art. 2\(2\)](#)

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**F8** Words in s. 7(5)(a)(ii) substituted (1.4.2005) by [The Water and Sewerage Undertakers \(Inset Appointments\) Regulations 2005 \(S.I. 2005/268\)](#), [reg. 2\(2\)](#)

## **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 [<sup>F9</sup>on—
    - (i) the existing appointee,
    - (ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
    - (iv) the appropriate agency, and
    - (v) 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 [<sup>F10</sup>on—
    - (i) the existing appointee,
    - (ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
    - (iv) the appropriate agency, and
    - (v) every] local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.

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- (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 [<sup>F11</sup>on—
    - (i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
    - (iii) the appropriate agency, and
    - (iv) 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.

- [<sup>F12</sup>(6A) In this section “the appropriate agency”, in relation to the replacement of a relevant undertaker, means—
- (a) the Environment Agency, if the undertaker's area is wholly in England;
  - (b) the NRBW, if the undertaker's area is wholly in Wales;
  - (c) both the Environment Agency and the NRBW, if the undertaker's area is partly in England and partly in Wales.]

- <sup>F13</sup>[(7) The Secretary of State may by regulations impose such additional procedural requirements as he considers appropriate for any case where the conditions mentioned in section 7(5) above are required to be satisfied in relation to an application for an appointment or variation replacing a company as a relevant undertaker.]

#### Textual Amendments

- F9** Words in s. 8(2)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 13\(2\)](#), 94(2)(b)
- F10** Words in s. 8(4)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 13\(3\)](#), 94(2)(b)
- F11** Words in s. 8(5)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 13\(4\)](#), 94(2)(b)
- F12** [S. 8\(6A\)](#) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 13\(5\)](#), 94(2)(b)
- F13** [S. 8\(7\)](#) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s. 40\(3\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

## 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.

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- (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.**

[(1)] 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.

<sup>F14</sup>[(2) Subsections (3) [<sup>F15</sup>to (4)] below apply where, by such an appointment or variation, one company (“the new undertaker”) is to replace another company as a relevant undertaker, but the appointment or variation has not come into force.

- (3) The following provisions of this Act shall (except where they are inapplicable to the kind of undertaker in question) apply in relation to the new undertaker as if the appointment or variation had come into force—
- (a) sections 18 to 24 and Schedule 3;
  - (b) sections 32 to 35;
  - (c) section 155 and Schedule 9;
  - (d) sections 156, 158 to 161 and 163 to 167 and Schedule 11;
  - (e) sections 168 to 171, 173, 174, 178 to 180 and Schedule 12;

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- (f) sections 181 to 183 and Schedule 13;
- (g) sections 184 to 188 and Schedule 14;
- (h) sections 189 to 192, 197 to 200, 202, 203, 206, 208, 209, 211, 212 and 217.

[ To the extent that charging rules issued under section 144ZA relate to charges imposed <sup>F16</sup>(3A) or security required by a relevant undertaker under section 185, those rules are to apply in relation to the new undertaker as if the appointment or variation had come into force.]

- (4) Such of the conditions imposed on the new undertaker under section 11 below as the Director may specify in a written notice given by him to the undertaker shall have effect, in relation to the operation of any provision mentioned in subsection (3) above before the appointment or variation comes into force, as if the appointment or variation had come into force.
- (5) The Secretary of State may by regulations amend subsection (3) above by adding to, removing or modifying references to provisions of this Act.]

#### Textual Amendments

- F14** S. 10(2)-(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 42](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt.I
- F15** Words in s. 10(2) substituted (1.11.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 7\(2\)](#); S.I. 2016/1007, art. 2(h)(iii)
- F16** S. 10(3A) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 7\(3\)](#); S.I. 2016/1007, art. 2(h)(iii)

#### Modifications etc. (not altering text)

- C2** S. 10 renumbered as subsection (1) of s. 10 (1.7.1992 ) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.42](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt. I
- C3** [S. 10\(3A\)](#) transitional provisions for effects of 2014 c. 21, Sch. 7 para. 7 (22.3.2017) by [The Water Act 2014 \(Commencement No. 9 and Transitional Provisions\) Order 2017 \(S.I. 2017/462\), art. 14](#)

### *Conditions of appointments*

## 11 Power to impose conditions.

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

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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
  - (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 [F17CMA] ,
 of such questions arising under the appointment and of such other matters, including (in the case of references to [F18the CMA] ) disputes as to determinations by the Director, as are specified in the appointment or are of a description so specified.



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- (3) Where any question or other matter falls to be determined by the [F19CMA] 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 [F20the CMA] ; and
  - (b) it shall be the duty of [F20the CMA] to determine any question or other matter referred by virtue of paragraph (a) above in accordance with—
    - (i) F21 .....
    - (ii) the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.
- [F22(3A) For the purposes of subsection (3) above, where—
- (a) the question or matter referred to the [F23CMA] concerns the review of a price control imposed on the company holding the appointment; and
  - (b) the [F23CMA] is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the company in connection with the reference,
- the [F23CMA] shall also have regard to the extent to which, in its view, its determination is likely to support the company's (rather than the Authority's) claims in relation to the question or matter referred to it.
- (3B) Subsections (4) and (5) of section 14, and [F24sections 14A and 14B], below apply to references to the [F25CMA] under this section as they apply to references under section 14.
- (3C) A report of the [F25CMA] on a reference under this section—
- (a) shall be made to the Authority; and
  - (b) shall include definite conclusions on the questions or other matters comprised in the reference, together with such an account of their reasons for those conclusions as, in the opinion of the [F25CMA] , is expedient for facilitating a proper understanding of those questions or other matters and of their conclusions,
- and subsections (5) and (6) of section 15 below apply to such a report as they apply to a report on a reference under section 14.]
- [F26(3D) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by subsection (3B) read with section [F2714B]).]
- (4) F28 .....
  - (5) F28 .....

#### Textual Amendments

- F17** Words in s. 12(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 53(2)(a); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F18** Word in s. 12(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 53(2)(b); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F19** Word in s. 12(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F20** Words in s. 12(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F21** S. 12(3)(b)(i) repealed (1.10.2004) by Water Act 2003 (c. 37), ss. 54(3), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/2528, **art. 2(h)(u)** (with art. 4, Sch.)
- F22** S. 12(3A)-(3C) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 54(2)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.)
- F23** Word in s. 12(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F24** Words in s. 12(3B) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(s), **Sch. 7 para. 8(a)**
- F25** Words in s. 12(3B)(3C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F26** S. 12(3D) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F27** Word in s. 12(3D) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(s), **Sch. 7 para. 8(b)**
- F28** S. 12(4)(5) repealed (1.10.2004) by Water Act 2003 (c. 37), ss. 54(3), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/2528, **art. 2(h)(u)** (with art. 4, Sch.)

*[<sup>F29</sup>Modification of appointment conditions: England*

**Textual Amendments**

- F29** **Ss. 12A-12I** and cross-heading inserted (24.1.2022) by Environment Act 2021 (c. 30), **ss. 86(2)**, 147(3) (with s. 144); S.I. 2022/48, **reg. 2(m)**

**12A Modification by the Authority**

- (1) This section and sections **12B** to **12I** apply in relation to a company appointed under this Chapter whose area is wholly or mainly in England.
- (2) The Authority may make modifications of the conditions of the company's appointment under this Chapter.
- (3) Before making any modifications under this section, the Authority must give notice—
  - (a) stating that it proposes to make modifications,
  - (b) setting out the proposed modifications and their effect,
  - (c) stating the reasons why it proposes to make the modifications, and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (4) That time must not be less than 42 days from the date of publication of the notice.
- (5) A notice under subsection (3) must be given—
  - (a) by publishing the notice in a way the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the modifications, and
  - (b) by sending a copy of it to—
    - (i) each company holding an appointment under this Chapter the conditions of which the Authority proposes to modify,

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- (ii) any other company holding an appointment under this Chapter, any water supply licensee and any sewerage licensee, whose interests the Authority considers are likely to be materially affected by the modifications,
  - (iii) the Secretary of State,
  - (iv) any person whose functions are or include representing those within sub-paragraph (i) or (ii) in respect of interests of theirs that the Authority considers are likely to be materially affected by the modifications, and
  - (v) the Consumer Council for Water.
- (6) The Authority must consider any representations which are duly made.
- (7) If, within the time specified under subsection (3)(d), the Secretary of State directs the Authority not to make a modification, the Authority must comply with the direction.
- (8) Subsections (9) to (11) apply where, having complied with subsections (3) to (6), the Authority decides to proceed with making modifications.
- (9) The Authority must—
- (a) publish the decision and the modifications in a way the Authority considers appropriate for bringing them to the attention of persons likely to be affected by the modifications,
  - (b) state the effect of the modifications,
  - (c) state how it has taken account of any representations duly made, and
  - (d) state the reason for any differences between the modifications and those set out in the notice under subsection (3).
- (10) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 2ZA).
- (11) The date specified may not be less than 56 days from publication of the decision to make the modification (except as provided in section 12B).

## **12B Modification of conditions of appointment: early effective date**

- (1) The date specified by virtue of section 12A(10) in relation to a modification under that section may be less than 56 days from the publication of the decision to make the modification if—
- (a) the Authority considers it necessary or expedient for the modification to have effect before the 56 days expire, and
  - (b) the consultation condition is satisfied.
- (2) The consultation condition is that the notice under section 12A relating to the modification—
- (a) stated the date from which the Authority proposed that the modification should have effect,
  - (b) stated the Authority's reasons for proposing that the modification should have effect from a date less than 56 days from the decision to modify, and
  - (c) explained why, in the Authority's view, that would not have a material adverse effect on any person holding an appointment under this Chapter.

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## **12C Modifications of conditions under section 12A: supplementary**

- (1) This section applies where under section 12A the Authority modifies the conditions of any appointment under this Chapter.
- (2) The Authority may make such incidental or consequential modifications of the conditions of any appointments as it considers necessary or expedient.
- (3) The modification of a condition of an appointment has effect subject to the giving of a direction under paragraph 2 of Schedule 2ZA in relation to the decision to which the modification relates.

## **12D Appeal to the CMA**

- (1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification under section 12A of a condition of an appointment under this Chapter.
- (2) An appeal may be brought under this section only by—
  - (a) a company holding an appointment under this Chapter the conditions of which the Authority has decided to modify,
  - (b) any other company holding an appointment under this Chapter, any water supply licensee or any sewerage licensee, whose interests are materially affected by the decision,
  - (c) a person whose functions are or include representing those within paragraph (a) or (b) in respect of interests of theirs which are materially affected by the decision, or
  - (d) the Consumer Council for Water.
- (3) The permission of the CMA is required for the bringing of an appeal under this section.
- (4) The CMA may refuse permission only on one of the following grounds—
  - (a) in relation to an appeal brought by a company, water supply licensee or sewerage licensee within subsection (2)(b), that the interests of the company or licensee are not materially affected by the decision;
  - (b) in relation to an appeal brought by a person within subsection (2)(c), that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to any appeal, that the appeal is brought for reasons that are trivial or vexatious, or has no reasonable prospect of success.

## **12E Procedure on appeal to CMA**

- (1) Schedule 2ZA makes provision about the procedure for appeals under section 12D.
- (2) Except where specified otherwise in that Schedule, the functions of the CMA with respect to an appeal under section 12D are to be carried out by a group constituted for that purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

## **12F Determination by CMA of appeal**

- (1) This section applies to an appeal brought under section 12D.
- (2) In determining an appeal, the CMA must have regard, to the same extent as is required of the Authority, to—

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- (a) the Authority’s duties under section 2, and
  - (b) the Authority’s strategic priorities and objectives as set out in a statement under section 2A.
- (3) In determining the appeal the CMA—
- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal, but
  - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
- (4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2),
  - (b) that the Authority failed to give appropriate weight to any matter mentioned in subsection (2),
  - (c) that the decision was based, wholly or partly, on an error of fact,
  - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 12A(9)(b),
  - (e) that the Authority did not follow the procedure required by sections 12A to 12C, or
  - (f) that the decision was otherwise wrong in law.
- (5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

## **12G CMA’s powers on allowing an appeal**

- (1) Where the CMA allows an appeal under section 12D to any extent, it must do one or both of the following—
- (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA.
- (2) A direction under subsection (1) must not require the Authority to do anything that it would not have power to do (apart from the direction).
- (3) The Authority must comply with a direction given to it under that subsection.

## **12H Time limits for CMA to determine an appeal**

- (1) The CMA must determine an appeal within the period of 4 months beginning with the permission date, unless subsection (2) applies.
- (2) This subsection applies where—
- (a) the CMA has received representations on the timing of the determination from a party to the appeal, and
  - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1).

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- (3) Where subsection (2) applies, the CMA must determine an appeal within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (4) Where subsection (2) applies, the CMA must also—
  - (a) inform the parties to the appeal of the time limit for determining the appeal, and
  - (b) publish that time limit in a way it considers appropriate to bring it to the attention of any other persons likely to be affected by the determination.
- (5) References in this section to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with section 12D(3).
- (6) In this section and in section 12I any reference to a party to an appeal is to be read in accordance with Schedule 2ZA.

## **12I Determination of appeal by CMA: supplementary**

- (1) A determination by the CMA on an appeal—
  - (a) must be contained in an order made by the CMA;
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
  - (d) must be notified by the CMA to the parties to the appeal;
  - (e) must be published by the CMA—
    - (i) as soon as reasonably practicable after the determination is made;
    - (ii) in a way the CMA considers appropriate to bring it to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The CMA may exclude from publication any information it is satisfied is—
  - (a) commercial information, the disclosure of which would, or in the CMA's opinion might, significantly harm the legitimate business interests of an undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual, the disclosure of which would, or in the CMA's opinion might, significantly harm the individual's interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA under subsection (1)(a).
- (4) The steps must be taken—
  - (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
  - (b) in any other case, within a reasonable time.
- (5) Section 12C applies where a condition of a licence is modified in accordance with section 12G as it applies where a condition of a licence is modified under section 12A.]

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*[<sup>F30</sup>Modification of appointment conditions: Wales]*

**Textual Amendments**

**F30** S. 13 cross-heading substituted (24.1.2022) by Environment Act 2021 (c. 30), ss. 86(3), 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

**13 Modification by agreement.**

[<sup>F31</sup>(A1) This section and sections 14 to 16B apply in relation to a company appointed under this Chapter whose area is wholly or mainly in Wales.]

- (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.
- (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.

**Textual Amendments**

**F31** S. 13(A1) inserted (24.1.2022) by Environment Act 2021 (c. 30), ss. 86(4), 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

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#### 14 Modification references to [F32CMA].

- (1) The Director may make to the [F33CMA] a reference which is so framed as to require [F34the CMA] 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 [F35CMA] 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 [F36the CMA] 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 [F37CMA] 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.
- (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 [F38CMA] in carrying out an investigation on a reference under this section [F39or in carrying out functions under section 16A below], to give to [F40the CMA] —
  - (a) any information in his possession which relates to matters falling within the scope of the investigation [F41or the carrying out of those functions], and which is either—
    - (i) requested by [F40the CMA] for that purpose; or
    - (ii) information which, in his opinion, it would be appropriate for that purpose to give to [F40the CMA] without any such request;
 and
  - (b) any other assistance which [F40the CMA] may require, and which it is within his power to give, in relation to any such matters;



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and [<sup>F40</sup>the CMA], for the purpose of carrying out any such investigation [<sup>F42</sup>or such functions], 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 [<sup>F43</sup>CMA] 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.

[<sup>F44</sup>(6A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 14B and 16B).]

(7) <sup>F45</sup> .....

(7A) <sup>F45</sup> .....

(8) <sup>F46</sup> .....

(8A) <sup>F46</sup> .....

#### Textual Amendments

- F32** Word in s. 14 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(8\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F33** Word in s. 14(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F34** Words in s. 14(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F35** Word in s. 14(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F36** Words in s. 14(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F37** Word in s. 14(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F38** Word in s. 14(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(5\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F39** Words in s. 14(5) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 55\(2\)\(a\)](#), 105(3); S.I. 2004/2528, [art. 2\(h\)](#) (with savings in [art. 4](#), Sch.)
- F40** Words in s. 14(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(5\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F41** Words in s. 14(5) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 55\(2\)\(b\)](#), 105(3); S.I. 2004/2528, [art. 2\(h\)](#) (with savings in [art. 4](#), Sch.)
- F42** Words in s. 14(5) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 55\(2\)\(c\)](#), 105(3); S.I. 2004/2528, [art. 2\(h\)](#) (with savings in [art. 4](#), Sch.)
- F43** Word in s. 14(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(6\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F44** S. 14(6A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(7\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F45** S. 14(7)(7A) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278](#), 279, [Sch. 25 para. 25\(4\)](#), [Sch. 26](#); S.I. 2003/1397, [art. 2\(1\)](#), [Sch.](#) (with savings in [art. 8](#))

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**F46** S. 14(8)(8A) repealed (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 53(3)(4), 101(2), 105(3), [Sch. 9 Pt. 2](#); S.I. 2004/641, [art. 3\(k\)\(z\)\(i\)](#) (with art. 6, Sch. 3)

#### **[<sup>F47</sup>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 [<sup>F48</sup>CMA] 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 [<sup>F48</sup>CMA] 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.

#### **Textual Amendments**

- F47** Ss. 14A, 14B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 25\(5\)](#); S.I. 2003/1397, [art. 2\(1\)](#), Sch.
- F48** Words in s. 14A(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 55](#); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)

#### **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 [<sup>F49</sup>(1A),] (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).

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[ Section 109 shall, in its application by virtue of subsection (1) above, have effect as <sup>F50</sup>(1A) if—

(a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 14 of the Water Industry Act 1991.”,  
and

(b) subsection (8A) were omitted.]

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; <sup>F51</sup>...

[ after subsection (3), there were inserted—  
<sup>F52</sup>(aa)

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

(b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

[<sup>F53</sup>(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

“(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.”.]

(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.]

#### Textual Amendments

**F47** Ss. 14A, 14B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 25(5)**; [S.I. 2003/1397](#), **art. 2(1)**, Sch.

**F49** Word in s. 14B(1) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(2)** (with art. 3, Sch. 2 para. 2)

**F50** S. 14B(1A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(3)** (with art. 3, Sch. 2 para. 2)

**F51** Word in s. 14B(2)(a) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(4)(a)** (with art. 3, Sch. 2 para. 2)

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- F52** S. 14B(2)(aa) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(4)(b)** (with art. 3, Sch. 2 para. 2)
- F53** S. 14B(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(5)** (with art. 3, Sch. 2 para. 2)

## 15 Reports on modification references.

- (1) In making a report on a reference under section 14 above, the [F54CMA] —
- (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.

[F55(1A) For the purposes of section 16 below, a conclusion contained in a report of the [F56CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [F57] by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference].

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 14 above as the conclusions of the [F58CMA], the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

[F59(2) .....

[F60(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [F61CMA] on a reference under section 14 above.

(3A) In making any report on a reference under section 14 above the [F61CMA] must have regard to the following considerations before disclosing any information.

(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [F61CMA] thinks is contrary to the public interest.

(3C) The second consideration is the need to exclude from disclosure (so far as practicable)

- (a) commercial information whose disclosure the [F61CMA] 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 [F61CMA] thinks might significantly harm the individual's interests.

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- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.]
- (4) A report of the [<sup>F62</sup>CMA] 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.
- (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.

#### Textual Amendments

- F54** Word in s. 15(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F55** S. 15(1A)(1B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(6)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F56** Word in s. 15(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F57** Word in s. 15(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F58** Word in s. 15(1B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F59** S. 15(2) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), Sch. 10 Pt. IV para. 13(4), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, **art. 2 Sch.**
- F60** S. 15(3)-(3D) substituted (20.6.2003) for s. 15(3) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(6)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F61** Word in s. 15(3)-(3C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F62** Word in s. 15(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 16 Modification following report.

- (1) Where a report of the [<sup>F63</sup>CMA] on a reference under section 14 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;

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- (c) 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
  - (d) 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—
- (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.
- (4) A notice under subsection (3) above shall be given—
- (a) 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
  - (b) by serving a copy of the notice on the company whose appointment it is proposed to modify.
- [<sup>F64</sup>(4A) After considering any representations or objections made in response to proposals set out in a notice under subsection (3) above, the Authority shall give notice to the [<sup>F65</sup>CMA] —
- (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.
- (4B) The Authority shall include with the notice under subsection (4A) above a copy of any representations or objections received in relation to the notice under subsection (3) above.
- (4C) If the period of four weeks from the date on which the notice under subsection (4A) above is given elapses without a direction under section 16A(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 16A(1)(b) below has been given, make the modifications which are not specified in the direction.]
- (5) The Director shall not under this section make any modification 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

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- (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.

#### Textual Amendments

- F63** Words in s. 16(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 57**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F64** S. 16(4A)-(4C) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 55(3)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with savings in art. 4)
- F65** Words in s. 16(4A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 57**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F66</sup>16A [<sup>F67</sup>CMA's] power of veto following report

- (1) [<sup>F68</sup>The CMA] 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—
- not to make the modifications set out in that notice; or
  - 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 [<sup>F69</sup>CMA] is given a notice under section 16(4A) above and on the application of the [<sup>F69</sup>CMA], 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 [<sup>F69</sup>CMA] 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 [<sup>F69</sup>CMA] gives a direction under subsection (1) above, it—
- shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
  - shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—
    - 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;
    - 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 [<sup>F69</sup>CMA] 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 [<sup>F69</sup>CMA] shall give notice—
- stating that it proposes to make the modifications and setting them out;

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- (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 [<sup>F69</sup>CMA] 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 [<sup>F69</sup>CMA] 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 [<sup>F69</sup>CMA] shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

<sup>F70</sup>(10) .....

#### Textual Amendments

- F66** Ss. 16A, 16B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with **art. 4**, Sch.)
- F67** Word in s. 16A heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F68** Words in s. 16A(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F69** Words in s. 16A(2)-(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F70** S. 16A(10) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### **16B** [<sup>F71</sup>CMA'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 [<sup>F72</sup>CMA] 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 [<sup>F72</sup>CMA] 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 [<sup>F72</sup>CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or



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- (b) information relating to the private affairs of an individual whose disclosure the [F72CMA] 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 [F73(6A),] (7) and (8) below, for the purposes of any investigation by the [F74CMA] 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
  - (h) section 116 (statement of policy).

[ Section 109 shall, in its application by virtue of subsection (6) above, have effect as F75(6A) if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 16A of the Water Industry Act 1991.”, and

- (b) subsection (8A) were omitted.]

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

- (a) subsection (2) were omitted;

[F76(b) after subsection (3), there were inserted—

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA 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 CMA 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; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; 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 [F77CMA] under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the [F77CMA] under section 16A(1) of that Act in connection with the reference concerned and

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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.]

#### Textual Amendments

- F66** Ss. 16A, 16B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.)
- F71** Word in s. 16B heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 59(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F72** Word in ss. 16B(2)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F73** Word in s. 16B(6) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 76(2)** (with art. 3, Sch. 2 para. 2)
- F74** Word in s. 16B(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F75** S. 16B(6A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 76(3)** (with art. 3, Sch. 2 para. 2)
- F76** S. 16B(7)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 76(4)** (with art. 3, Sch. 2 para. 2)
- F77** Word in s. 16B(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

*[<sup>F78</sup>Modification of appointment conditions: England and Wales]*

#### Textual Amendments

- F78** S. 17 cross-heading inserted (24.1.2022) by [Environment Act 2021 \(c. 30\)](#), **ss. 86(5)**, 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

## 17 Modification by order under other enactments.

[<sup>F79</sup>(1) Where the [<sup>F80</sup>CMA] or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may, subject to subsection (3), also provide for the modification of the conditions of a company’s appointment under this Chapter 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—

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- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the 2002 Act where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by a relevant undertaker; or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by a relevant undertaker; or
  - (b) an order under section 160 or 161 of the 2002 Act where the feature, or combination of features, of the market [<sup>F81</sup>or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition is—
    - (i) the structure or an aspect of the structure of a market for the supply of goods or services by a relevant undertaker; or
    - (ii) the conduct of a relevant undertaker or of customers 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.
- [<sup>F82</sup>(4) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the 2002 Act have the same meanings in that subsection as in that Part.]

#### Textual Amendments

- F79** S. 17(1)(2) substituted (20.6.2003 for all purposes subject to art. 3(1) of the first commencing S.I. and 29.12.2004 "for water purposes") by [Enterprise Act 2002 \(c. 40\), s. 168\(9\), 279, Sch. 9 para. 7\(2\)](#); S.I. 2003/1397, [art. 2\(1\), Sch.](#); S.I. 2004/3233, [art. 2, Sch.](#) (with arts. 3-5)
- F80** Word in s. 17(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 60](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F81** Words in s. 17(2)(b) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 77](#) (with art. 3)
- F82** S. 17(4) substituted (20.6.2003 for all purposes subject to art. 3(1) of the first commencing S.I. and 29.12.2004 "for water purposes") by [Enterprise Act 2002 \(c. 40\), s. 168\(9\), 279, Sch. 9 para. 7\(3\)](#); S.I. 2003/1397, [art. 2\(1\), Sch.](#); S.I. 2004/3233, [art. 2, Sch.](#) (with arts. 3-5)

#### Modifications etc. (not altering text)

- C4** S. 17(2)(a) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\), art. 16, Sch. 4 para. 10](#)

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