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Water Industry Act 1991

1991 CHAPTER 56

PART II

APPOINTMENT AND REGULATION OF UNDERTAKERS

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 water undertakers or sewerage undertakers carry out functions.
- (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
 - (b) any such company,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

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- (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 [^{F1}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.

Textual Amendments

F1 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)

Modifications etc. (not altering text)

C1 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

^{X1}28 Customer service committees.

- (1) Every company holding an appointment under Chapter I of this Part shall be allocated by the Director to a committee established and maintained by him for the purpose, in relation to such companies as may be allocated to it, of carrying out—
 - (a) the functions assigned by this Act to such a committee; and
 - (b) such other functions as the committees maintained under this section may be required to carry out by the Director.
- (2) The committees maintained under this section shall be known as customer service committees.
- (3) There shall not at any time be more than ten customer service committees, but it shall be the duty of the Director so to exercise his powers under this section to establish and maintain customer service committees and to allocate companies to those committees as to secure that at all times—
 - (a) such customer service committees are maintained; and
 - (b) such allocations under subsection (1) above are in force,
 as he considers appropriate for ensuring that the interests of the customers and potential customers of the companies for the time being holding appointments under Chapter I of this Part are effectively represented.
- (4) A customer service committee shall consist of—
 - (a) a chairman appointed by the Director after consultation with the Secretary of State; and
 - (b) such number (not less than ten nor more than twenty) of other members appointed by the Director as the Director may determine.

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- (5) In appointing persons to be members of a customer service committee the Director shall have regard to—
- (a) the desirability of the persons appointed being persons who have experience of, and have shown capacity in, some matter relevant to—
 - (i) the functions of a water undertaker or sewerage undertaker; or
 - (ii) the carrying out of those functions in relation to any area by a company which the Director has allocated, or is proposing to allocate, to that committee;

and
 - (b) the desirability of—
 - (i) the committee including one or more persons with experience of work among, and the special needs of, disabled persons; and
 - (ii) persons appointed by virtue of this paragraph including disabled persons.
- (6) An appointment of a person to hold office as the chairman of a customer service committee shall be for a term not exceeding four years.
- (7) Subject to subsection (6) above, the chairman and other members of a customer service committee shall hold and vacate office in accordance with the terms of their appointments and, notwithstanding that subsection, shall on ceasing to hold office be eligible for re-appointment.
- (8) The provisions of Schedule 4 to this Act shall have effect with respect to customer service committees.

Editorial Information

- X1** The insertion of the new cross-heading "The Consumer Council for Water" 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.

^{x2}29 Duties of customer service committees.

- (1) It shall be the duty of a customer service committee—
- (a) to keep under review all matters appearing to the committee to affect the interests of the persons who are customers or potential customers of the companies allocated to the committee;
 - (b) to consult each company so allocated about such of those matters as appear to affect the interests of the customers or potential customers of that company; and
 - (c) to make to a company so allocated all such representations about any such matter as the committee considers appropriate.
- (2) Subject to subsection (3) below, it shall be the duty of a customer service committee to investigate any complaint which—
- (a) is made to the committee by any person who is a customer or potential customer of a company allocated to the committee or is referred to the committee by the Director under section 30 below;
 - (b) does not appear to the committee to be vexatious or frivolous; and

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- (c) relates to the carrying out by that company of any of the functions of a relevant undertaker.
- (3) It shall be the duty of a customer service committee to refer to the Director every complaint which is made to the committee by any person in relation to a company allocated to the committee and consists in or amounts to—
- (a) an assertion that the company is contravening or has contravened any condition of the company's appointment under Chapter I of this Part or any statutory or other requirement enforceable under section 18 above; or
 - (b) a complaint which the Director would be required to investigate under section 181 below.
- (4) It shall be the duty of a customer service committee, where the committee considers it appropriate to do so in connection with any such complaint as is mentioned in subsection (2) above, to make representations on behalf of the complainant to the company in question about any matter—
- (a) to which the complaint relates; or
 - (b) which appears to the committee to be relevant to the subject-matter of the complaint;
- and it shall be the duty of a customer service committee to refer to the Director or, as the case may be, back to the Director any such complaint as is so mentioned which the committee is unable to resolve.
- (5) The only remedy for a breach by a customer service committee of a duty imposed on it by this section shall be the making of such a complaint to the Director as the Director is required to consider under section 30(3)(c) below.
- (6) It shall be the duty of the Director to make such arrangements as he considers appropriate for facilitating the provision by one customer service committee to another of any such information as that other committee may require for any purpose relating to the carrying out of its functions.

Editorial Information

- X2** The insertion of the new cross-heading "The Consumer Council for Water" 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.

^{x3}30 Duties of Director with respect to complaints

- (1) Where a complaint is made to the Director by a customer or potential customer of a company allocated to a customer service committee and the complaint does not consist in or amount to—
- (a) an assertion that the company is contravening or has contravened any condition of the company's appointment under Chapter I of this Part or any statutory or other requirement enforceable under section 18 above; or
 - (b) a complaint which the Director is required to investigate under section 181 below,
- it shall be the duty of the Director to consider whether the complaint should be referred to that committee, instead of being dealt with by the Director himself.

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- (2) Where a complaint which does consist in or amount to such an assertion as is mentioned in subsection (2)(a) above—
- (a) is made to the Director by a customer or potential customer of any company allocated to a customer service committee; or
 - (b) is referred to him by such a committee,
- it shall be the duty of the Director to consider whether the complaint should be referred by him to the Secretary of State.
- (3) It shall be the duty of the Director to consider the following complaints, that is to say—
- (a) any complaint to which the duty imposed by subsection (2) above applies and which is not referred by the Director to the Secretary of State;
 - (b) any complaint which is referred to the Director under section 29(4) above; and
 - (c) any complaint made to the Director by a customer or potential customer of a company allocated to a customer service committee that the committee has failed to perform any duty imposed on it by section 29(1) to (4) above.
- (4) It shall be the duty of the Director to take such steps in consequence of his consideration of any matter in pursuance of this section (including, in a case falling within subsection (3)(b) or (c) above, any step which could have been taken by the committee itself) as he considers appropriate.

Editorial Information

- X3** The insertion of the new cross-heading "The Consumer Council for Water" 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.

[^{X4}30A ^{F2}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—
 - (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.

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- (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 "The Consumer Council for Water" 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

- F2** **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

VALID FROM 01/08/2005

The Consumer Council for Water

[^{F3}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)—
 - (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.

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- (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.

Textual Amendments

- F3** [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](#))

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.]

Textual Amendments

F3 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](#))

VALID FROM 01/10/2005

^{F4}General functions of the Council

Textual Amendments

F4 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.

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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
- (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.

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- (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
 - (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.

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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 of information under this section does not contravene section 206 below (restriction on disclosure of information).

I **F5** **27H** **Provision of information to the Council**

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

F5 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

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- (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 by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).

Textual Amendments

F5 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

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considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

Textual Amendments

F5 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.
- (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

F5 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)

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Power of Council to investigate other matters

F629A

- (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
 - (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.

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- (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

- F6** 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)

VALID FROM 01/10/2005

f^{F7}Further functions of Authority

Textual Amendments

- F7** 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.]

Provisions with respect to competition

31 Functions of Director with respect to competition.

- (1) ^{F8}

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[^{F9}(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.]

[^{F10}(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.]

[^{F11}(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 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).]

[^{F12}(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 [^{F13}the OFT] are to be read as including a reference to the Director ([^{F14}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).]

[^{F15}(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 [^{F16}Competition Commission] in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) ^{F17}. . . 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.

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(8) If any question arises as to whether subsection (2) or (3) above ^{F18} . . . 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) ^{F19}Part 4 of the 2002 Act]; or

^{F20}(b) Part I of the Competition Act 1998 (^{F21}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 ^{F22}the OFT] .

^{F23}(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) ^{F24}

Textual Amendments

- F8** 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](#))
- F9** 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.
- F10** 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\(2\)\(a\)](#)
- F11** 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.
- F12** 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.](#)
- F13** 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](#))
- F14** 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)
- F15** 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.
- F16** Words in s. 31(7) substituted (1.4.1999) by [S.I. 1999/506](#), [art. 30\(b\)](#)
- F17** 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.](#)
- F18** 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](#))
- F19** 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.
- F20** 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.](#)
- F21** 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\(2\)\(c\)](#)
- F22** 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](#))
- F23** 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.
- F24** 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](#))

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Modifications etc. (not altering text)

- C2** 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.**

32 Duty to refer merger of water or sewerage undertakings.

- (1) Subject to the following provisions of this section and to section 33 below, it shall be the duty of the Secretary of State to make a merger reference to the [^{F25}Competition Commission] if it appears to him that it is or may be the fact—
- (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.
- (2) The Secretary of State shall not make a merger reference under this section in respect of any actual or prospective merger of two or more water enterprises if it appears to him that the take over from which the merger has resulted or, as the case may be, would result was initiated before 9 a.m. on 11th January 1989.
- (3) For the purposes of subsection (2) above a merger of two or more enterprises results from a take over initiated before 9 a.m. on 11th January 1989 if—
- (a) the Secretary of State or the Director General of Fair Trading was given notice before that time on that date of the material facts about the proposed arrangements or transactions resulting in the merger; or
 - (b) the merger results exclusively from the acceptance of offers to acquire shares in a body corporate and those offers—
 - (i) were all made before that time on that date; or
 - (ii) in so far as they were not so made, consist in offers made, by the same person and in respect of the same shares, in substitution for offers made before that time on that date.

Textual Amendments

- F25** Words in s. 32(1) substituted (1.4.1999) by S.I. 1999/506, **art. 30(b)**

33 Exclusion of small mergers from duty to make merger reference.

- (1) The Secretary of State 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 him—
- (a) that the value of the assets taken over does not exceed or, as the case may be, would not exceed the amount for the time being specified in section 64(1)(b) of the 1973 Act (condition of merger reference relating to amount of assets taken over); or
 - (b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has assets the value of which does not exceed or, as the case may be, would not exceed that amount.

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- (2) In relation to a merger of two or more water enterprises—
- (a) the value of the assets taken over shall, for the purposes of subsection (1) above, be determined in accordance with section 67 of the 1973 Act by reference only to assets employed in or appropriated to a water enterprise; and
 - (b) the value of the assets of a water enterprise belonging to the person making the take over shall be taken for those purposes to be the value of such assets employed in or appropriated to that enterprise as by virtue of the exceptions in paragraph (a) of subsection (2) of that section are disregarded in determining the value of the assets taken over;
- and paragraph (b) of that subsection shall apply for determining the value of the assets referred to in paragraph (b) above as it applies in relation to the assets taken over.
- (3) For the purposes of this section and of any determination in accordance with this section—
- (a) the assets treated as employed in or appropriated to a water enterprise carried on by a company holding an appointment under Chapter I of this Part shall include all the assets for the time being of that company;
 - (b) every water enterprise any of whose assets fall to be disregarded as mentioned in subsection (2)(b) above shall be treated as belonging to the person making the take over;
 - (c) the enterprises mentioned in paragraph (b) above shall be treated as separate enterprises in so far as they are carried on by different companies holding appointments under Chapter I of this Part; and
 - (d) subsections (3) and (4) of section 67 of the 1973 Act (assets treated as appropriated to an enterprise and mergers over a period) shall apply as they apply for the purposes of, and of any determination in accordance with, subsection (2) of that section.
- (4) If the Secretary of State considers that it is appropriate—
- (a) for subsection (1) above to have effect with a reference in paragraph (a) to a different amount; or
 - (b) for the condition set out in that paragraph to be modified in any other respect,
- he may, in relation to mergers after the coming into force of the regulations, by regulations make such modifications of that paragraph and, for that purpose, of the other provisions of this section as may be prescribed.

Modifications etc. (not altering text)

C3 S. 33(1)(a) amended (9.2.1994) by [S.I. 1994/73](#), [reg. 2](#)

34 References with respect to water enterprise mergers.

- (1) Subject to subsections (2) to (4) below, the 1973 Act shall have effect in relation to any reference under section 32 above as if—
- (a) any such merger of two or more water enterprises as is required to be the subject of such a reference were a merger situation qualifying for investigation; and
 - (b) a reference under that section were made under section 64 of that Act or, as the case may be, under section 75 of that Act (references in anticipation of a merger).

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- (2) Nothing in subsection (1) above shall have the effect in relation to any reference under section 32 above of applying—
- (a) so much of Part V of the 1973 Act as requires the [^{F26}Competition Commission]to consider any of the matters set out in subsection (1) of section 64 of that Act; or
 - (b) the provisions of sections 69(2) to (4) and 75(3) of that Act (power to restrict matters referred).
- (3) In determining on a reference under section 32 above whether any matter operates, or may be expected to operate, against the public interest the [^{F26} Competition Commission]—
- [^{F27}(a) shall have regard to the desirability of giving effect to the principle that the Director’s ability, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises should not be prejudiced; and]
- (b) shall have regard to the desirability of achieving any other purpose so far only as they are satisfied—
 - (i) that that other purpose can be achieved in a manner that does not conflict with that principle; or
 - (ii) that the achievement of that other purpose is of substantially greater significance in relation to the public interest than that principle and cannot be brought about except in a manner that conflicts with that principle.
- (4) No order shall be made under Part V of the 1973 Act in consequence of any merger reference made under section 32 above in respect of an actual merger unless the reference was made within the period of six months beginning with whichever is the later of—
- (a) the day on which the merger took place; and
 - (b) the day on which the material facts about the transactions which resulted in the merger first came to the notice of the Secretary of State or the Director General of Fair Trading or were made public within the meaning of section 64 of the 1973 Act;
- and if on such a reference the [^{F26}Competition Commission]are satisfied that the reference was not made within that period their report on the reference shall state that fact and nothing else.

Textual Amendments

F26 Words in s. 34(2)(a)(3)(4) substituted (1.4.1999) by S.I. 1999/506, art. 30(b)

F27 S. 34(3)(a) substituted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s. 39(1)(3); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

35 Construction of merger provisions.

- (1) In this Chapter-

“enterprise” has the meaning given for the purposes of sections 64 to 77 of the 1973 Act by section 63(2) of that Act; and

“water enterprise” means an enterprise carried on by a relevant undertaker.

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- (2) References in this Chapter, 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 V of the 1973 Act, to be distinct enterprises; and sections 66 and 66A of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter as they have effect for the purposes of that Part.

^{F28}(3)

- (4) Nothing in sections 32 to 34 above shall prejudice any power of the Secretary of State, in a case in which he is not required to make a reference under section 32 above, to make a merger reference under Part V of the 1973 Act in respect of any actual or prospective merger of two or more water enterprises.

Textual Amendments

- F28** S. 35(3) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 39(2)(3), 56(7), [Sch.2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

Modifications etc. (not altering text)

- C4** S. 35(4) modified (temp.) (28.5.2003) by [The Enterprise Act 2002 \(Commencement No. 3, Transitional and Transitory Provisions and Savings\) Order 2003 \(S.I. 2003/1397\)](#), [art. 3\(3\)](#)

VALID FROM 01/10/2004

^{F29}*Disclosure of arrangements for remuneration*

Textual Amendments

- F29** 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.

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- (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
 - (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.]

Status:

Point in time view as at 01/05/2004. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation:

Water Industry Act 1991, CHAPTER III is up to date with all changes known to be in force on or before 16 April 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.