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Water Industry Act 1991

1991 CHAPTER 56

PART III

WATER SUPPLY

[^{F1}CHAPTER 2A

SUPPLY DUTIES ETC: LICENSED WATER SUPPLIERS

[^{F1}Duty of undertaker to supply licensed water supplier etc

Textual Amendments

- F1** Pt. 3 Ch. 2A inserted (1.4.2004 for specified provisions and purposes and 1.12.2005 otherwise) by [Water Act 2003 \(c. 37\)](#), ss. 56, 105(3), [Sch. 4 para. 3](#); [S.I. 2004/641](#), [art. 3\(I\)](#), [Sch. 1](#) (with [art. 6](#), [Sch. 3](#)); [S.I. 2005/2714](#), [art. 3\(a\)](#) (with [Sch. 2 para. 8](#))

66A Wholesale water supply by primary water undertaker

- (1) This section applies where—
- (a) a licensed water supplier requests its primary water undertaker to provide it with a supply of water for the purpose of supplying water to the premises of its customers in accordance with the retail authorisation; and
 - (b) the premises are in the area of the undertaker.
- (2) Where this section applies, it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
- (a) to take any such steps—
 - (i) for the purpose of connecting the premises in question with the undertaker's supply system; or

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- (ii) in respect of that system,
 as may be so provided for in order to enable the undertaker to provide the requested supply; and
- (b) having taken any such steps, to provide that supply.
- (3) A primary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier, or to take any steps to enable it to provide such a supply, if—
- (a) both of the first and second conditions are satisfied; or
- (b) the third condition is satisfied.
- (4) The first condition is that—
- (a) the premises to be supplied by the supplier do not consist in the whole or any part of a building; or
- (b) the supply to be made by it to those premises is for purposes other than domestic purposes.
- (5) The second condition is that the provision of the supply by the undertaker would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The third condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
- (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.
- (7) Where—
- (a) a request has been made by a licensed water supplier to its primary water undertaker for the purposes of subsection (1) above; and
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.
- (8) A water undertaker is the primary water undertaker of a licensed water supplier for the purposes of this section and section 66C below if the undertaker's supply system is to be used for the purpose of making the supply to premises mentioned in those sections.
- (9) In this section and sections 66B and 66C below—
- (a) any reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above; and

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- (b) any reference to the retail authorisation shall be construed in accordance with section 17A(2) above.

66B Introduction of water into water undertaker's supply system

- (1) This section applies where—
 - (a) a qualifying licensed water supplier requests a water undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and
 - (b) the premises are in the area of the undertaker.
- (2) This section also applies where—
 - (a) a water undertaker agrees to permit a qualifying licensed water supplier to introduce water into the undertaker's treatment works;
 - (b) in connection with that introduction, the supplier requests the undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and
 - (c) the premises are in the area of the undertaker.
- (3) Where this section applies, it shall be the duty of the water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
 - (a) to take any such steps—
 - (i) for the purpose of connecting the premises in question with the undertaker's supply system;
 - (ii) for the purpose of connecting the treatment works of the qualifying licensed water supplier with that system (in a case falling within subsection (1) above);
 - (iii) for the purpose of connecting with that system any source used by the qualifying licensed water supplier for the purpose of supplying water other than for domestic or food production purposes (in a case falling within subsection (1) above); or
 - (iv) in respect of that system,
as may be so provided for in order to enable the supplier to make the requested introduction of the water into that system; and
 - (b) having taken any such steps, to permit the requested introduction of the water into that system.
- (4) A water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable a qualifying water supplier to make such an introduction, if the first or second condition is satisfied.
- (5) The first condition is that permitting the introduction of the water into the water undertaker's supply system would—
 - (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or

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- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
 - (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.
- (7) Where—
- (a) a request has been made by a qualifying licensed water supplier to a water undertaker for the purposes of subsection (1) or (2) above; and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.
- (8) In this section “treatment works”—
- (a) in relation to a water undertaker, means the works designated as treatment works by the Secretary of State for the purposes of section 17B(6) above;
 - (b) in relation to a qualifying licensed water supplier, means the works designated from time to time by the Secretary of State as treatment works for the purposes of this paragraph.
- (9) Before designating any works for the purposes of subsection (8)(b) above, the Secretary of State shall consult the Assembly.
- (10) A list of any works designated for the purposes of subsection (8)(b) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.
- (11) Any pipe laid in pursuance of subsection (3)(a)(ii) or (iii) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
- (12) In this section and section 66C below, references to a qualifying licensed water supplier are references to a licensed water supplier which is the holder of a combined licence (within the meaning of Chapter 1A of Part 2 of this Act).

66C Wholesale water supply by secondary water undertaker

- (1) This section applies where—
- (a) a qualifying licensed water supplier—
 - (i) requests a water undertaker other than its primary water undertaker (the “secondary water undertaker”) to provide a supply of water for the purpose of the supplier supplying water, using the primary water undertaker’s supply system, to the premises of the supplier’s customers in accordance with the retail authorisation; and

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- (ii) requests its primary water undertaker to permit it to introduce that water into its supply system; and
 - (b) the premises are in the area of the primary water undertaker.
- (2) Where this section applies—
- (a) it shall be the duty of the secondary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
 - (i) to take any such steps in respect of its supply system as may be so provided for in order to enable it to provide the requested supply; and
 - (ii) having taken any such steps, to provide that supply; and
 - (b) it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
 - (i) to take any such steps specified in subsection (3) below as may be so provided for in order to enable the licensed water supplier to make the introduction of the requested supply of water into the primary water undertaker’s supply system; and
 - (ii) having taken any such steps, to permit the introduction of that supply of water into that supply system.
- (3) The steps mentioned in subsection (2)(b)(i) above are steps—
- (a) for the purpose of connecting the premises in question with the primary water undertaker’s supply system;
 - (b) for the purpose of connecting that system with the secondary water undertaker’s supply system; or
 - (c) in respect of the primary water undertaker’s supply system.
- (4) If the first or second condition is satisfied—
- (a) a secondary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier; and
 - (b) a primary water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable the licensed water supplier to make such an introduction.
- (5) The first condition is that the provision of the supply or permitting the introduction would—
- (a) require the undertaker in question, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
 - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) This second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
 - (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.

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(7) Where—

- (a) requests have been made by a licensed water supplier to its primary water undertaker and secondary water undertaker for the purposes of subsection (1) above; and
- (b) the steps which either of those undertakers is required to take by virtue of the request made to it include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the undertaker's failure to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

- (8) Any pipe laid in pursuance of subsection (2)(b)(i) above by virtue of subsection (3)(b) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.

66D Sections 66A to 66C: determinations and agreements

- (1) The Authority may determine, in a case referred to it by a licensed water supplier, whether any condition specified in section 66A(4) to (6), 66B(5) or (6) or 66C(5) or (6) above is satisfied (subject to section 66F below).
- (2) The period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are—
 - (a) those which are—
 - (i) in a case falling within section 66A(2) or 66B(3) above, agreed between the water undertaker and the licensed water supplier in question; and
 - (ii) in a case falling within section 66C(2) above, agreed between the water undertakers and the licensed water supplier in question; or
 - (b) in default of such agreement, those which are determined by the Authority, in a case referred to it by the licensed water supplier in question, if they are acceptable to the supplier,
 (subject to the following provisions of this section and sections 66E and 66F below).
- (3) The charges payable by a licensed water supplier to a water undertaker under an agreement under paragraph (a)(i) or (ii) of subsection (2) above or a determination under paragraph (b) of that subsection shall be fixed in accordance with the costs principle set out in section 66E below.
- (4) The Authority shall issue guidance in accordance with which the terms and conditions of an agreement under paragraph (a)(i) or (ii) of subsection (2) above shall be made.
- (5) Before issuing guidance under subsection (4) above, the Authority shall consult such persons as it considers appropriate.
- (6) The guidance issued under subsection (4) above shall include guidance with respect to the fixing of charges in accordance with subsection (3) above.
- (7) Subsection (8) below applies if it appears to the Authority that an agreement under paragraph (a)(i) or (ii) of subsection (2) above has not been made in accordance with—
 - (a) subsection (3) above; or

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- (b) the guidance issued under subsection (4) above.
- (8) The Authority may require the parties to the agreement to—
- (a) modify the agreement; or
 - (b) terminate the agreement,
- and that requirement shall be enforceable under section 18 above by the Authority.
- (9) Neither the [^{F2}CMA] nor the Authority may exercise, in respect of an agreement under paragraph (a)(i) or (ii) of subsection (2) above, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements); and
 - (b) subsection (2) of section 35 of that Act (interim directions).
- (10) Subsection (9)(b) above does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement under paragraph (a)(i) or (ii) of subsection (2) above; and
 - (b) in respect of which subsection (1)(b) of section 35 of that Act applies.

Textual Amendments

- F2** Word in s. 66D(9) 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. 88](#) (with art. 3)

66E Section 66D: costs principle

- (1) The costs principle referred to in subsection (3) of section 66D above is that the charges payable by a licensed water supplier to a water undertaker, under the agreement or determination mentioned in that subsection, shall enable the undertaker to recover from the supplier—
- (a) any expenses reasonably incurred in performing any duty under sections 66A to 66C above in accordance with that agreement or determination, and
 - (b) the appropriate amount in respect of qualifying expenses and a reasonable return on that amount,
- to the extent that those sums exceed any financial benefits which the undertaker receives as a result of the supplier supplying water to the premises of relevant customers.
- (2) In subsection (1) above “qualifying expenses” means expenses (whether of a capital nature or otherwise) that the water undertaker has reasonably incurred or will reasonably incur in carrying out its functions.
- (3) For the purposes of subsection (1)(b) above, the appropriate amount is the amount which the water undertaker—
- (a) reasonably expected to recover from relevant customers; but
 - (b) is unable to recover from those customers as a result of their premises being supplied with water by the licensed water supplier.
- (4) Nothing in subsection (3) above shall enable a water undertaker to recover any amount—

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- (a) to the extent that any expenses can be reduced or avoided; or
- (b) to the extent that any amount is recoverable in some other way (other than from other customers of the undertaker).

(5) In this section “relevant customers” means customers to whose premises the licensed water supplier is to make any supply of water in connection with which the agreement or determination mentioned in subsection (1) above is made.

66F Section 66D: supplementary

(1) Before the Authority makes—

- (a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66B(5) or (6) above is satisfied; or
- (b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which a water undertaker is to perform any duty under section 66B above,

it shall consult the Secretary of State (subject to subsection (3) below).

(2) Before the Authority makes—

- (a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66C(5) or (6) is satisfied; or
- (b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which the water undertakers are to perform any duty under section 66C above,

it shall consult [^{F3}the persons specified in subsection (2A)].

[The persons specified for the purposes of subsection (2) are—

- ^{F4}(2A)
- (a) the Secretary of State (subject to subsections (3) and (4) below);
 - (b) the Environment Agency, if the determination is in relation to a supply of water that would affect water resources in England;
 - (c) the NRBW, if the determination is in relation to a supply of water that would affect water resources in Wales.]

(3) If—

- (a) a determination mentioned in subsection (1) or (2) above is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales; and
- (b) in the case of a determination mentioned in subsection (2) above, the area of the secondary water undertaker in question is wholly or mainly in Wales,

the Authority shall consult the Assembly (and not the Secretary of State).

(4) If a determination mentioned in subsection (2) above—

- (a) is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in—
 - (i) England; or
 - (ii) Wales;
- (b) but the area of the secondary water undertaker in question is (respectively) wholly or mainly in—
 - (i) Wales; or
 - (ii) England,

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the Authority shall consult the Assembly (as well as the Secretary of State).

- (5) The Authority shall publish guidance issued under section 66D(4) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) The Authority may from time to time revise the guidance so issued.
- (7) Before revising any guidance under subsection (6) above, the Authority shall consult such persons as it considers appropriate.
- (8) Subsection (5) above applies to guidance revised under subsection (6) above as it applies to guidance issued under section 66D(4) above.
- (9) In this section, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.
- (10) Where the period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are determined in accordance with subsection (2)(b) of section 66D above, they shall have effect as if they had been agreed between the parties in question (and references in the following provisions of this Act to an agreement under that section shall be construed accordingly).

Textual Amendments

- F3** Words in s. 66F(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 233(2)** (with Sch. 7)
- F4** S. 66F(2A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 233(3)** (with Sch. 7)

66G Designation of strategic supply

- (1) Subsection (2) below applies if at any time the Authority determines that an introduction of water which a water undertaker is required to permit under section 66B or 66C above in accordance with an agreement under section 66D above constitutes a strategic supply of water.
- (2) The Authority shall designate the introduction as a strategic supply.
- (3) Subsection (4) below applies if—
 - (a) a water undertaker requests the Authority to make a determination that an introduction of water constitutes a strategic supply for the purposes of subsection (1) above, or
 - (b) the Authority otherwise proposes to make a determination that an introduction of water constitutes a strategic supply for the purposes of that subsection.
- (4) The Authority shall give notice of the request or proposed determination to—
 - (a) the Secretary of State;
 - (b) the Assembly;
 - (c) the Environment Agency^{F5}, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in England];

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- [the NRBW, if the request or proposed determination relates to an introduction
F6(ca) of water to the supply system of a water undertaker for the purpose of supplying water to premises in Wales;]
- (d) the other party or parties, or the parties, to the agreement under section 66D above; and
- (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that an introduction designated under this section as a strategic supply no longer constitutes such a supply, it shall cancel its designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that an introduction no longer constitutes a strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, an introduction of water is a strategic supply if, without that introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers^{F7}, and supplies which it is obliged to make under section 66A or 66C,] as well as supplying customers of the licensed water supplier in question with water for domestic purposes.

Textual Amendments

- F5** Words in s. 66G(4)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 234\(2\)](#) (with Sch. 7)
- F6** S. 66G(4)(ca) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 234\(3\)](#) (with Sch. 7)
- F7** Words in s. 66G(10) inserted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\), s. 49\(3\), Sch. 5 para. 7\(1\)](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(j)

66H Designation of collective strategic supply

- (1) Subsection (2) below applies if at any time the Authority determines that two or more introductions of water—
- (a) which are made by a licensed water supplier; and
- (b) which a water undertaker is required to permit under section 66B or 66C above in accordance with agreements under section 66D above,
- constitute a collective strategic supply of water.
- (2) The Authority shall designate the introductions as a collective strategic supply.
- (3) Subsection (4) below applies if—

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- (a) a water undertaker requests the Authority to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of subsection (1) above, or
 - (b) the Authority otherwise proposes to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of that subsection.
- (4) The Authority shall give notice of the request or proposed determination to—
 - (a) the Secretary of State;
 - (b) the Assembly;
 - (c) the Environment Agency^{F8}, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in England];
[the NRBW, if the request or proposed determination relates to an introduction
 - ^{F9}(ca) of water to the supply system of a water undertaker for the purpose of supplying water to premises in Wales;]
 - (d) the other party or parties, or the parties, to the agreements under section 66D above; and
 - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that introductions designated under this section as a collective strategic supply no longer constitute such a supply, it shall cancel their designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that introductions no longer constitute a collective strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, introductions of water are a collective strategic supply if, without those introductions being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers^{F10}, and supplies which it is obliged to make under section 66A or 66C,] as well as supplying the customers of the licensed water supplier in question with water for domestic purposes.]

Textual Amendments

- F8** Words in s. 66H(4)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 235\(2\)](#) (with Sch. 7)
- F9** S. 66H(4)(ca) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 235\(3\)](#) (with Sch. 7)
- F10** Words in s. 66H(10) inserted (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 5 para. 7\(2\)](#) (with s. 49(1)(6)); S.I. 2011/694, art. 3(j)

Status:

Point in time view as at 14/07/2014.

Changes to legislation:

Water Industry Act 1991, Cross Heading: Duty of undertaker to supply licensed water supplier etc is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.