



Water Industry Act 1991

1991 CHAPTER 56

PART IV

SEWERAGE SERVICES

CHAPTER II

PROVISION OF SEWERAGE SERVICES

Adoption etc. of sewers and disposal works

102 Adoption of sewers and disposal works.

- (1) Subject to the following provisions of this section and to sections 103, 105 and 146(3) below, a sewerage undertaker may at any time declare that—
- (a) any sewer which is situated within its area or which serves the whole or any part of that area,^{F1} . . .
 - [^{F2}(aa) any lateral drain which communicates or is to communicate with a public sewer which—
 - (i) is so situated or serves the whole or any part of that area; and
 - (ii) is vested in that undertaker; or]
 - (b) any sewage disposal works which are so situated or which serve the whole or any part of that area,
- shall, as from such date as may be specified in the declaration, become vested in the undertaker.
- (2) The owner, or any of the owners, of any sewer [^{F3}, lateral drain] or sewage disposal works with respect to which a sewerage undertaker might make a declaration under this section may make an application to that undertaker requesting it to make a declaration under this section with respect to the sewer [^{F3}, lateral drain] or works.

Status: Point in time view as at 01/04/2017.

Changes to legislation: Water Industry Act 1991, Cross Heading: Adoption etc. of sewers and disposal works is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) A declaration or application under this section may be made with respect to a part only of a sewer.
- (4) A sewerage undertaker which proposes to make a declaration under this section—
- [^{F4}(za) shall give notice of its proposal to any sewerage licensee which uses, or removes matter from, the undertaker's sewerage system in accordance with a retail, wholesale or disposal authorisation;]
 - (a) shall give notice of its proposal to the owner or owners of the sewer [^{F5}, lateral drain] or works in question; and
 - (b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under section 105 below or, as the case may be, until any appeal so lodged has been determined.
- (5) A sewerage undertaker, in deciding whether a declaration should be made under this section, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—
- (a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;
 - (b) whether the sewer [^{F6}or lateral drain] is constructed under a highway or under land reserved by a planning scheme for a street;
 - (c) the number of buildings which the sewer [^{F7}or lateral drain] is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;
 - (d) the method of construction and state of repair of the sewer [^{F8}, lateral drain] or works; and
 - (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.
- (6) Any person who immediately before the making of a declaration under this section was entitled to use the sewer [^{F9}or lateral drain] in question shall be entitled to use it, or any sewer [^{F9}or lateral drain] substituted for it, to the same extent as if the declaration had not been made.
- (7) No declaration may be made under this section in respect of any sewer or works the construction of which was completed before 1st October 1937.

Textual Amendments

- F1** Word in s. 102(1)(a) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(1)(a)(3), 105(3), [Sch. 9 Pt. 3](#); S.I. 2004/641, [art. 4\(b\)\(d\)\(i\)](#) (with [Sch. 3 para. 7](#))
- F2** S. 102(1)(aa) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(1)(a)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F3** Words in s. 102(2) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(1)(b)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F4** S. 102(4)(za) inserted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 90](#); S.I. 2017/462, [art. 3\(k\)\(xi\)](#)
- F5** Words in s. 102(4)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(1)(c)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F6** Words in s. 102(5)(b) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(1)(d)(i)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

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- F7** Words in s. 102(5)(c) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(1)(d)(ii)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F8** Words in s. 102(5)(d) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(1)(d)(iii)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F9** Words in s. 102(6) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(1)(e)(3)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)

Modifications etc. (not altering text)

- C1** S. 102 excluded (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), regs. 1(1)(b), **5(2)** (with reg. 1(1)(c))

103 Adoption of cross-border sewers etc.

- (1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under section 102 above with respect to—
- (a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker; ^{F10} . . .
 - [^{F11}(aa) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or]
 - (b) any sewage disposal works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the area of another sewerage undertaker,
- it shall give notice to the other undertaker.
- (2) Where a sewerage undertaker is required to give notice under subsection (1) above to another undertaker, no declaration under section 102 above shall be made by the former undertaker until either—
- (a) the other undertaker has consented to the declaration; or
 - (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.
- [^{F12}(3) Where—
- (a) a sewer (or part of a sewer) or a lateral drain is vested, or any sewage disposal works are vested, in a relevant body; and
 - (b) in the case of a sewer, part of a sewer, lateral drain or works vested in railway undertakers or dock undertakers, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to those undertakers and held or used by them for the purposes of their undertaking,
- a sewerage undertaker shall not make a declaration under section 102 above with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.]
- (4) Where a sewerage undertaker makes a declaration under section 102 above with respect to—
- (a) a sewer [^{F13}or lateral drain] which is situated within the area of another sewerage undertaker; or
 - (b) any sewage disposal works which are so situated,

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it shall forthwith give notice of the fact to that other undertaker.

- (5) In this section “relevant body” means any sewerage undertaker, any local authority or county council or any railway undertakers or dock undertakers.

Textual Amendments

- F10** Word in s. 103(1)(a) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [96\(2\)\(a\)\(3\)](#), [105\(3\)](#), [Sch. 9 Pt. 3](#); S.I. 2004/641, [art. 4\(b\)\(d\)\(i\)](#) (with [Sch. 3 para. 7](#))
- F11** S. 103(1)(aa) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [96\(2\)\(a\)\(3\)](#), [105\(3\)](#); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F12** S. 103(3) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [96\(2\)\(b\)\(3\)](#), [105\(3\)](#); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F13** Words in s. 103(4)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [96\(2\)\(c\)\(3\)](#), [105\(3\)](#); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

104 Agreements to adopt sewer, drain or sewage disposal works, at future date

[^{F14}(1) Subject to subsection (7) and section 146(3) below, a sewerage undertaker may agree with—

- (a) any person constructing or proposing to construct—
 - (i) any sewer;
 - (ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or
 - (iii) any sewage disposal works; or
- (b) any person at whose expense the undertaker is, by virtue of an agreement under section 160 below, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.]

- (2) A person [^{F15}mentioned in paragraph (a) or (b) of subsection (1) above] may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this section.
- (3) An application under subsection (2) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.
- (4) Where—
 - (a) a person who has made an application to a sewerage undertaker under subsection (2) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and

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- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 105 below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period, the undertaker may delay its response to the application until a reasonable time after the required information is provided.
- (5) Any agreement made under this section by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer [^{F16}, lateral drain] or works to which it relates.
- (6) ^{F17}
- [^{F18}(6A) Without limiting the terms which may be included in an agreement under this section, the terms of an agreement which relates to a drain may include in particular—
 - (a) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;
 - (b) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;
 - (c) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and
 - (d) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.]
- [^{F19}(7) A sewerage undertaker shall not make an agreement under this section with respect to—
 - (a) a sewer, drain or sewage disposal works situated within the area of another sewerage undertaker; or
 - (b) a drain which is intended to communicate with a sewer which—
 - (i) is so situated; or
 - (ii) is vested in another sewerage undertaker,until one of the conditions mentioned in subsection (8) below is satisfied.
- (8) The conditions are—
 - (a) that other undertaker has consented to the making of the agreement; or
 - (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.]
- [^{F20}(9) Undertakers shall have regard to any guidance about agreements under this section issued by—
 - (a) the Secretary of State, in relation to undertakers whose areas are wholly or mainly in England, or
 - (b) the Welsh Ministers, in relation to undertakers whose areas are wholly or mainly in Wales.]

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Textual Amendments

- F14** S. 104(1) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(a)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F15** Words in s. 104(2) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(b)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F16** Words in s. 104(5) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(c)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F17** S. 104(6) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(d)**, 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(ii)** (with Sch. 3 para. 7)
- F18** S. 104(6A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(e)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F19** S. 104(7)(8) substituted (28.5.2004) for s. 104(7) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(f)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F20** S. 104(9) added (1.10.2010 for specified purposes, 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 42(3)**, 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2012/2048, art. 2 (with art. 3)

105 Appeals with respect to adoption.

- (1) An owner of any sewer [^{F21}, lateral drain] or sewage disposal works may appeal to the [^{F22}Director] if—
- (a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under section 102 above; or
 - (b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.
- [^{F23}(2) A person who has entered or wants to enter an agreement under section 104 may appeal to the Authority about any matter concerning the agreement (including whether it is concluded, its terms and its operation).]
- (3) The time for the making of an appeal under subsection (1) above by the owner of any sewer [^{F24}, lateral drain] or sewage disposal works shall be—
- (a) in the case of an appeal by virtue of paragraph (a) of that subsection, any time within two months after notice of the proposal is served on that owner; and
 - (b) in the case of an appeal by virtue of paragraph (b) of that subsection, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.
- (4) On the hearing of an appeal under this section, the [^{F22}Director] may—
- (a) in the case of an appeal under subsection (1) above, allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or
 - (b) in the case of an appeal under subsection (2) above—
 - (i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
 - (ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;

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and any declaration made under paragraph (a) above shall have the same effect as if it had been made by the undertaker in question.

- (5) Where the [^{F22}Director] makes a declaration under subsection (4)(a) above, he may, if he thinks fit—
- (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that his declaration shall not take effect unless any conditions so specified are accepted.
- (6) Where the [^{F22}Director] makes an agreement under subsection (4)(b) above on behalf of a sewerage undertaker, he may do so on such terms as he considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as he considers appropriate for ensuring that the terms of the agreement are reasonable.
- (7) The [^{F22}Director], in deciding, on an appeal under this section, whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in section 102(5) above; and for the purposes of this subsection, in its application in relation to an appeal under subsection (2) above, paragraphs (a) to (e) of section 102(5) above shall have effect with the necessary modifications.

Textual Amendments

- F21** Words in s. 105(1) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(5)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F22** Word in s. 105 substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 35(7)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt.II
- F23** S. 105(2) substituted (1.10.2010 for specified purposes, 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 42(2)**, 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2012/2048, art. 2 (with art. 3)
- F24** Words in s. 105(3) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(5)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

[^{F25}105Z] **Adoption at a future date: orders by Authority**

- (1) This section applies where a person mentioned in section 104(1)(a) or (b) makes a request to a sewerage undertaker under section 104(2).
- (2) The person or the sewerage undertaker may apply to the Authority for an order under subsection (4) if the person and the sewerage undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the sewerage undertaker, make an order under subsection (4) if the Authority is satisfied that—
- (a) where the person is such person as is mentioned in section 104(1)(a), it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
 - (b) the person and the sewerage undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—

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- (a) require the sewerage undertaker to give such undertakings as to the vesting of the sewer, such part of the drain as constitutes the lateral drain or the works in the undertaker as the Authority may specify, and
 - (b) impose such terms and conditions as regards taking the benefit of the undertakings as the Authority may specify.
- (5) An order under subsection (4) has effect as an agreement under section 104 between the person and the sewerage undertaker.
- (6) The Authority may not make an order under subsection (4) with respect to—
- (a) a sewer, drain or sewage disposal works situated in the area of another undertaker, or
 - (b) a drain which is intended to communicate with a sewer which—
 - (i) is so situated, or
 - (ii) is vested in another sewerage undertaker,
 until one of the conditions mentioned in subsection (7) is satisfied.

(7) The conditions are that—

 - (a) the other sewerage undertaker has consented in writing to the making of the order, or
 - (b) the Minister, on an application made to the Minister, has disappplied paragraph (a), either unconditionally or subject to such conditions as the Minister thinks fit.

(8) “The Minister” means—

 - (a) the Secretary of State, as regards the consent of a sewerage undertaker whose area is wholly or mainly in England;
 - (b) the Welsh Ministers, as regards the consent of a sewerage undertaker whose area is wholly or mainly in Wales.

(9) Neither the CMA nor the Authority may exercise, in respect of an agreement for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event, the powers conferred by—

 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).

(10) Subsection (9)(b) does not apply to the exercise of powers in respect of conduct—

 - (a) which is connected with an agreement for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.

(11) In exercising its functions under this section, the Authority must have regard to the desirability of—

 - (a) facilitating effective competition within the sewerage services industry;
 - (b) the recovery by the sewerage undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;

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- (c) the ability of the sewerage undertaker to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the sewerage undertaker to meet its existing obligations, or likely future obligations, to provide sewerage services.

Textual Amendments

F25 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938](#), art. 2(c)(ii); [S.I. 2017/462](#), art. 3(e)(ii)

105ZB Variation and termination of section 104 agreements

- (1) On the application of a party to a section 104 agreement to vary (or terminate) the agreement, the Authority may—
 - (a) if it appears to the Authority that it is necessary or expedient that the section 104 agreement should be varied (or terminated),
 - (b) if the Authority is satisfied, in the case of an application to vary the agreement involving such person as is mentioned in section 104(1)(a), that it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
 - (c) if the Authority is satisfied that variation (or termination) cannot be achieved by agreement within a reasonable time,by order vary (or terminate) the section 104 agreement.
- (2) If an order under subsection (1) is made in relation to a section 104 agreement, the agreement—
 - (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect, as the case may be.
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 104 agreement, the powers conferred by—
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct—
 - (a) which is connected with an agreement to vary or terminate a section 104 agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the sewerage undertaker in complying with its obligations under the section 104 agreement in question and to the desirability of—
 - (a) facilitating effective competition within the sewerage services industry;

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- (b) the recovery by the sewerage undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the ability of the sewerage undertaker to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the sewerage undertaker to meet its existing obligations, or likely future obligations, to provide sewerage services.
- (7) In this section and sections 105ZC to 105ZI “section 104 agreement” means an agreement with a sewerage undertaker for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event and includes—
- (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
 - (b) any agreement which has been varied by order under subsection (1).

Textual Amendments

F25 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938, art. 2\(c\)\(ii\)](#); [S.I. 2017/462, art. 3\(e\)\(ii\)](#)

105ZC Codes in respect of section 104 agreements

- (1) The Authority must issue a code in respect of section 104 agreements.
- (2) The code may make provision about—
 - (a) procedures in connection with making an agreement under section 104;
 - (b) procedures in connection with varying or terminating a section 104 agreement;
 - (c) procedures to be followed by the Authority in determining whether to make an order under section 105ZA(4) or 105ZB(1);
 - (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a sewerage undertaker;
 - (e) the terms and conditions of a section 104 agreement;
 - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 104 agreement;
 - (g) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) Provision under subsection (2)(d) may include in particular provision about circumstances relating to—
 - (a) the nature of the work;
 - (b) the kind of premises supplied or to be supplied.
- (4) Provision under subsection (2)(e) may include in particular provision about terms and conditions as regards—
 - (a) constructing associated infrastructure;
 - (b) vesting associated infrastructure in a sewerage undertaker;

Status: Point in time view as at 01/04/2017.

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- (c) making a communication with public sewers.
- (5) If the Authority considers that a sewerage undertaker is not acting as required by the code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (6) The Authority may not give a direction under subsection (5) requiring a person to enter into, vary or terminate an agreement.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
- (8) The code may make different provision for different persons or descriptions of person.
- (9) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (10) A revised code may include provision for applying any of its revisions to section 104 agreements made before the revised code comes into force.

Textual Amendments

F25 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3), 94(3)**; [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [art. 3\(e\)\(ii\)](#)

105ZD Codes under section 105ZC: procedure

- (1) Before issuing a code under section 105ZC, the Authority must—
 - (a) prepare a draft of the proposed code under section 105ZC, and
 - (b) consult such persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (3) Before a code under section 105ZC prepared by the Authority is issued, the Minister may direct the Authority—
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In this section “the Minister” means—
 - (a) the Secretary of State, so far as the code relates to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the code relates to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.
- (6) The power under subsection (3) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (7) If the power under subsection (3) is not exercised by the Secretary of State or the Welsh Ministers on the first occasion on which it may be exercised by the Secretary

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of State or (as the case may be) the Welsh Ministers, it may not be exercised by the Secretary of State or (as the case may be) the Welsh Ministers on a later occasion.

- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) This section is subject to section 105ZE.

Textual Amendments

F25 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [art. 3\(e\)\(ii\)](#)

105ZE Codes under section 105ZC: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 105ZC and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZD does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
- (a) the issuing of the revised code, and
 - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

Textual Amendments

F25 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [art. 3\(e\)\(ii\)](#)

105ZF Rules about charges in connection with a section 104 agreement

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a section 104 agreement.
- (2) The rules may in particular make provision about—
- (a) what types of charge may be imposed;

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- (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed;
 - (e) publication of the charges that may be imposed.
- (3) The rules may require a sewerage undertaker, upon declaring a sewer, drain or sewage disposal works to be vested in the undertaker in accordance with a section 104 agreement, to pay to the other party to the agreement an amount (which may be nil) determined in accordance with the rules.
- (4) Rules made by virtue of subsection (3) may, in particular, provide for the determination to take into account—
 - (a) revenue that might be derived from the sewer, drain or sewage disposal works in question;
 - (b) costs that might have been incurred in providing such a sewer, drain or sewage disposal works.
- (5) The rules may also make provision as to—
 - (a) the amount of security that may be required by a sewerage undertaker for the purposes of any charges imposed by the sewerage undertaker under a section 104 agreement;
 - (b) the type of security that may be required;
 - (c) the payment of interest on a sum deposited with a sewerage undertaker by way of security.
- (6) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make different provision for different sewerage undertakers or descriptions of undertaker.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
 - (a) guidance is issued under section 105ZI, and
 - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (11) Revised rules may include provision for applying any of their revisions to section 104 agreements made before the revised rules come into effect.

Textual Amendments

- F25** Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [art. 3\(e\)\(ii\)](#)

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105ZG Rules under section 105ZF: procedure

- (1) Before issuing rules under section 105ZF, the Authority must—
 - (a) prepare a draft of the proposed rules, and
 - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) the Council;
 - (d) any sewerage undertakers or other persons likely to be affected by the rules;
 - (e) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which the relevant persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 105ZI in making rules under section 105ZF.
- (5) Before rules under section 105ZF prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
 - (a) the Secretary of State, so far as the rules relate to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the rules relate to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 105ZH.

Textual Amendments

F25 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3), 94(3)**; [S.I. 2015/1938](#), art. 2(c)(ii); [S.I. 2017/462](#), art. 3(e)(ii)

105ZH Rules under section 105ZF: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 105ZF and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
 - (a) a revision for which consultation is unnecessary, or
 - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZG does not apply to the proposed revised rules.

Status: Point in time view as at 01/04/2017.

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- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
 - (a) that period of 14 days expires, or
 - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
 - (a) the issuing of the revised rules, and
 - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 105ZG.

Textual Amendments

F25 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938, art. 2\(c\)\(ii\)](#); [S.I. 2017/462, art. 3\(e\)\(ii\)](#)

105ZI Rules under section 105ZF: guidance

- (1) The Minister may issue guidance as to the content of rules under section 105ZF.
- (2) Before issuing the guidance, the Minister must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
 - (a) the Secretary of State;
 - (b) the Welsh Ministers;
 - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.

Status: Point in time view as at 01/04/2017.

Changes to legislation: Water Industry Act 1991, Cross Heading: Adoption etc. of sewers and disposal works is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
- (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
 - (b) the Welsh Ministers, so far as the guidance is as to the content of rules relating to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.]

Textual Amendments

F25 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3), 94(3)**; [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [art. 3\(e\)\(ii\)](#)

[^{F26}105A Schemes for the adoption of sewers, lateral drains and sewage disposal works

- (1) The Secretary of State may by regulations provide for him to make schemes for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works of the descriptions set out in paragraphs (a), (aa) and (b) of section 102(1) above.
- (2) The regulations may require sewerage undertakers to prepare draft schemes and to submit them to the Secretary of State.
- (3) Each scheme shall relate to—
 - (a) the area of a sewerage undertaker, or part or parts of it; or
 - (b) the areas of more than one sewerage undertaker, or part or parts of them.
- (4) It shall be the duty of a sewerage undertaker, in specified circumstances, to exercise its powers under section 102 above with a view to making the declaration referred to in subsection (1) of that section in relation to sewers, lateral drains or sewage disposal works which—
 - (a) fall within the area to which a scheme relates; and
 - (b) satisfy specified criteria.
- (5) The circumstances and the criteria shall each be—
 - (a) specified in the regulations; or
 - (b) determined in accordance with the regulations and specified in the scheme.
- (6) In relation to the exercise of those powers pursuant to that duty—
 - (a) section 102 above shall have effect—
 - (i) with the omission of subsections (2), (5) and (7);
 - (ii) as if in subsection (1) the words “sections 103, 105 and 146(3) below” read “section 105B below”;
 - (iii) with the omission of the words “or application” in subsection (3);
 - (iv) as if for subsection (4)(a) there were substituted—
 - “(a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question unless, after diligent enquiry, he or they cannot be traced;

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- (aa) shall publish notice of its proposal in the prescribed manner; and”;
 - (v) as if in subsection (4)(b) “two months” read “two months or, if longer, the period specified by virtue of section 105B(5) below” and “section 105 below” read “section 105B(4) or (5) below, or”; and
 - (vi) as if section 96(3) of the Water Act 2003 did not apply;
 - (b) sections 103 and 105 above shall not apply; and
 - (c) if the regulations so provide, section 146(3) below shall not apply in circumstances or cases specified in the regulations.
- (7) A duty imposed on a sewerage undertaker under subsection (4) above shall be enforceable by the Secretary of State under section 18 above.
- (8) A statutory instrument containing regulations under subsection (1) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]

Textual Amendments

F26 Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98**, 105(3); [S.I. 2007/1021](#), **art. 2(b)**

[^{F27} 105B Adoption schemes: appeals

- (1) Any person falling within subsection (2) below may appeal to the Authority if he is aggrieved by—
- (a) the proposal of a sewerage undertaker to make a declaration under section 102 above in relation to a sewer, lateral drain or sewage disposal works, pursuant to the undertaker’s duty to do so under section 105A(4) above (the “relevant duty”); or
 - (b) the failure of a sewerage undertaker to make such a proposal pursuant to that duty.
- (2) The persons referred to are—
- (a) an owner of a sewer, lateral drain or sewage disposal works;
 - (b) any other person affected by the proposal, or the failure, in question.
- (3) The grounds upon which a person may appeal are—
- (a) in a subsection (1)(a) case, that the relevant duty is not owed in relation to the sewer, lateral drain or sewage disposal works, or that the making of the proposed declaration would be seriously detrimental to him;
 - (b) in a subsection (1)(b) case, that the relevant duty is owed in relation to the sewer, lateral drain or sewage disposal works; or
 - (c) any other prescribed ground.
- (4) An appeal under subsection (1)(a) above shall be made within two months after notice of the proposal is—
- (a) served on the owner of the sewer, lateral drain or sewage disposal works; or
 - (b) published in accordance with section 102(4) above as modified by section 105A(6) above,
- (or, if both occur, within two months after whichever is the later).

Status: Point in time view as at 01/04/2017.

Changes to legislation: Water Industry Act 1991, Cross Heading: Adoption etc. of sewers and disposal works is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) An appeal under subsection (1)(b) above shall be made within such period as is specified in the scheme (not being less than two months).
- (6) On the hearing of an appeal under subsection (1) above, the Authority may—
 - (a) in a subsection (1)(a) case, allow or disallow the proposal of the sewerage undertaker; or
 - (b) in a subsection (1)(b) case, determine that the undertaker was not under the relevant duty in relation to the sewer, lateral drain or sewage disposal works in question,
 or, in either case, make any declaration that the sewerage undertaker might have made, unless the proposal is disallowed.
- (7) If, in a subsection (1)(a) case, the Authority finds that the making of the proposed declaration would be seriously detrimental to the appellant, it shall disregard any duty on the part of the sewerage undertaker to make the proposal for the purpose of determining whether to allow or disallow the proposal.
- (8) If, in a subsection (1)(a) case, the Authority disallows the proposal of the sewerage undertaker, the scheme pursuant to which it was made shall have effect as if there were no duty under section 105A(4) above on the sewerage undertaker in relation to the sewer, lateral drain or sewage disposal works in question.
- (9) Where the Authority makes a declaration under subsection (6) above, it may, if it thinks fit—
 - (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that its declaration shall not take effect unless any conditions so specified are accepted.
- (10) A declaration made under subsection (6) above shall have the same effect as if it had been made by the undertaker.
- (11) The Secretary of State may by regulations make further provision in connection with appeals under this section.
- (12) The regulations may, in particular, require the Authority to have regard to prescribed matters when determining an appeal under this section.]

Textual Amendments

F27 Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; S.I. 2007/1021, **art. 2(b)**

[^{F28}105C Adoption schemes: supplementary

- (1) The Secretary of State may vary any scheme, or revoke it.
- (2) Before making regulations or any scheme under section 105A above, and before amending or revoking the regulations or varying or revoking a scheme, the Secretary of State shall consult—
 - (a) each sewerage undertaker which would be affected;
 - (aa) [^{F29} any sewerage licensee which uses, or removes matter from, the sewerage system of any such sewerage undertaker in accordance with a retail, wholesale or disposal authorisation;]

Status: Point in time view as at 01/04/2017.

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- (b) the Authority;
 - (c) the Council;
 - (d) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State shall publish each scheme he makes, and any such scheme as varied, in the way he considers best for the purpose of bringing it to the attention of those likely to be affected by it.]

Textual Amendments

- F28** Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98**, 105(3); S.I. 2007/1021, **art. 2(b)**
- F29** [S. 105C\(2\)\(aa\)](#) inserted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 93**; S.I. 2017/462, **art. 3(k)(xii)**

Status:

Point in time view as at 01/04/2017.

Changes to legislation:

Water Industry Act 1991, Cross Heading: Adoption etc. of sewers and disposal works is up to date with all changes known to be in force on or before 22 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.