



# Competition and Service (Utilities) Act 1992

## 1992 CHAPTER 43

### PART II

#### COMPETITION

##### *Water supply and sewerage services*

#### **39 Mergers of water undertakers**

- (1) In section 34(3) of the Water Industry Act 1991 (matters to which the Monopolies Commission is to have regard on a reference under section 32 of that Act with respect to a water enterprise) the following shall be substituted for paragraph (a)—
  - “(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”.
- (2) Section 35(3) of the Act of 1991 (meaning of reference to the number of water enterprises under independent control) shall cease to have effect.
- (3) This section applies only to references under section 32 of the Act of 1991 made after the commencement of this section.

#### **40 Inset appointments**

- (1) In section 7 of the Water Industry Act 1991 (continuity of appointments, replacement appointments etc.), in subsection (4), for “company; or”, at the end of paragraph (b) there shall be substituted—
  - “company;
  - (bb) the appointment or variation relates only to parts of that area and the conditions mentioned in subsection (5) below are satisfied in

relation to each of the premises in those parts which are served by that company; or”.

(2) In section 7 of the Act of 1991 the following subsections shall be added at the end—

“(5) The conditions are that—

- (a) the premises are, or are likely to be, supplied with not less than 250 megalitres of water in any period of twelve months; and
- (b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.

(6) The Secretary of State may, after consulting the Director, make regulations amending subsection (5)(a) above by substituting, for the quantity of water for the time being specified there, such smaller quantity as he considers appropriate.”

(3) In section 8 of the Act of 1991 (procedure with respect to appointments and variations) the following subsection shall be added at the end—

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

(4) In section 9 of the Act of 1991 (duties affecting making of appointments and variations), in subsection (3), after “(4)(b)” insert “or (bb)”.

(5) In section 36(3) of the Act of 1991, the following paragraphs are hereby repealed—

- (a) paragraph (a)(ii) (premises to be treated as being served by a water undertaker holding an appointment under Chapter I of Part I of that Act if they consist in a building or part of a building which is situated within thirty metres of a distribution main of that company); and
- (b) paragraph (b)(ii) (premises to be treated as being served by a sewerage undertaker holding an appointment under Chapter I of Part I of that Act if they consist in a building or part of a building which is situated within thirty metres of a relevant sewer which is not a storm-water overflow sewer).

(6) In section 158 of the Act of 1991 (powers to lay pipes), the following subsections shall be added at the end—

“(8) Subsections (9) and (11) below apply where—

- (a) an appointment or variation has been made under section 7 above replacing a company as a relevant undertaker,
- (b) the appointment or variation relates only to parts of the area to which the company’s appointment as relevant undertaker related, and
- (c) the conditions mentioned in subsection (5) of that section were required to be satisfied in relation to each of the premises in those parts served by that company.

(9) Where the company which has replaced the relevant undertaker has done so as water undertaker, in the application of this section and section 159 below in relation to that company any pipe supplying, or intended to supply, any of the premises referred to in subsection (8)(c) above with a supply of water which exceeds, or is likely to exceed, 250 megalitres of water in any period

of twelve months shall, for the purposes of subsection (7) above, be deemed to be a water main.

- (10) Where the Secretary of State makes regulations under section 7(6) above amending section 7(5)(a) above he shall by regulations make the corresponding amendment in subsection (9) above.
- (11) Where the company which has replaced the relevant undertaker has done so as sewerage undertaker, in the application of this section and section 159 below in relation to that company any pipe draining, or intended to drain, any of those premises shall, for the purposes of subsection (7) above, be deemed to be a sewer.”

#### **41 The domestic supply duty**

In section 52 of the Water Industry Act 1991 (the domestic supply duty), in subsection (2), the words “and which are situated in the area of the undertaker” shall cease to have effect.

#### **42 Transitional provision with respect to replacement appointments**

The provisions of section 10 of the Water Industry Act 1991 (transitional provision with respect to replacement appointments) shall become subsection (1) of that section and the following subsections shall be added at the end—

- “(2) Subsections (3) and (4) below apply where, by such an appointment or variation, one company (“the new undertaker”) is to replace another company as a relevant undertaker, but the appointment or variation has not come into force.
- (3) The following provisions of this Act shall (except where they are inapplicable to the kind of undertaker in question) apply in relation to the new undertaker as if the appointment or variation had come into force—
- (a) sections 18 to 24 and Schedule 3;
  - (b) sections 32 to 35;
  - (c) section 155 and Schedule 9;
  - (d) sections 156, 158 to 161 and 163 to 167 and Schedule 11;
  - (e) sections 168 to 171, 173, 174, 178 to 180 and Schedule 12;
  - (f) sections 181 to 183 and Schedule 13;
  - (g) sections 184 to 188 and Schedule 14;
  - (h) sections 189 to 192, 197 to 200, 202, 203, 206, 208, 209, 211, 212 and 217.
- (4) Such of the conditions imposed on the new undertaker under section 11 below as the Director may specify in a written notice given by him to the undertaker shall have effect, in relation to the operation of any provision mentioned in subsection (3) above before the appointment or variation comes into force, as if the appointment or variation had come into force.
- (5) The Secretary of State may by regulations amend subsection (3) above by adding to, removing or modifying references to provisions of this Act.”

### 43 Connections with water mains and communications with sewers

- (1) In section 45 of the Water Industry Act 1991 (which imposes on a water undertaker a duty to make a connection with one of its water mains where the premises for which a supply of water is required are in the undertaker's area), the words "in the undertaker's area" shall cease to have effect.
- (2) In section 106 of the Act of 1991 (which gives the owner or occupier of any premises in the area of a sewerage undertaker a right to have his drains or sewer communicate with the public sewers of that undertaker), the following subsection shall be substituted for subsection (1)—
  - "(1) Subject to the provisions of this section—
    - (a) the owner or occupier of any premises, or
    - (b) the owner of any private sewer which drains premises,shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer."

### 44 Bulk supplies of water

The following sections shall be substituted for section 40 of the Water Industry Act 1991 (bulk supplies of water)—

#### "40 Bulk supplies

- (1) Where, on the application of any qualifying person—
  - (a) it appears to the Director that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the water undertaker specified in the application ("the supplier") should give a supply of water in bulk to the applicant, and
  - (b) the Director is satisfied that the giving and taking of such a supply cannot be secured by agreement,the Director may by order require the supplier to give and the applicant to take such a supply for such period and on such terms and conditions as may be provided in the order.
- (2) In this section "qualifying person" means—
  - (a) a water undertaker; or
  - (b) a person who has made an application for an appointment or variation under section 8 above which has not been determined.
- (3) Where the application is made by a person who is a qualifying person by virtue of subsection (2)(b) above, an order made under this section in response to that application shall be expressed not to come into force until the applicant becomes a water undertaker for the area specified in the order, or for an area which includes that area.
- (4) Subject to subsection (3) above, an order under this section shall have effect as an agreement between the supplier and the applicant.

- (5) The Director shall not make an order under this section unless he has first consulted the NRA.
- (6) In exercising his functions under this section, the Director shall have regard to the desirability of—
  - (a) facilitating effective competition within the water supply industry;
  - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

#### **40A Variation and termination of bulk supply agreements**

- (1) This section applies where, on the application of any party to a bulk supply agreement—
  - (a) it appears to the Director that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, to vary the agreement or to terminate it, and
  - (b) the Director is satisfied that that cannot be achieved by agreement between the parties to the agreement.
- (2) The Director may by order—
  - (a) vary the agreement by—
    - (i) varying the period for which the supply of water is to be given; or
    - (ii) varying any of the terms or conditions on which that supply is to be given; or
  - (b) terminate the agreement.
- (3) Before making any order under this section the Director shall consult the NRA.
- (4) Where an order is made under this section the agreement concerned shall have effect subject to the provision made by the order or (as the case may be) shall cease to have effect.
- (5) An order under this section may require the payment of compensation by any party to the agreement to any other party.
- (6) The obligations of a water undertaker under subsection (5) above shall be enforceable under section 18 above by the Director.
- (7) In exercising his functions under this section, the Director shall have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement and to the desirability of—
  - (a) facilitating effective competition within the water supply industry;
  - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;

- (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

(8) In this section—

“bulk supply agreement” means an agreement between one or more water undertakers for the supply of water in bulk and includes—

- (a) an order under section 40 above which is deemed to be an agreement by virtue of subsection (4) of that section; and
- (b) any agreement which has been varied by order under this section; and

“supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.”

#### **45 New connections with public sewers**

The following section shall be inserted in the Water Industry Act 1991 after section 110—

##### **“110A New connections with public sewers**

(1) Where, on the application of any qualifying person—

- (a) it appears to the Director that it is necessary or expedient for the purposes of this Part that the sewerage undertaker specified in the application (“the established undertaker”) should permit a main connection into his sewerage system, and
- (b) the Director is satisfied that the making of such a connection cannot be secured by agreement,

the Director may by order require the established undertaker to allow the connection for such period and on such terms and conditions as may be provided in the order.

(2) In this section “qualifying person” means—

- (a) a sewerage undertaker; or
- (b) a person who has made an application for an appointment or variation under section 8 above which has not been determined.

(3) In subsection (1) above a “main connection” means a connection—

- (a) between a sewer or disposal main and a sewer or disposal main; or
- (b) a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works.

(4) Where the application is made by a person who is not a sewerage undertaker at the time when the application is made, an order made under this section in response to that application shall be expressed not to come into force until the applicant becomes a sewerage undertaker for the area specified in the order, or for an area which includes that area.

- (5) Subject to subsection (4) above, an order under this section shall have effect as an agreement between the established undertaker and the applicant but may be varied or revoked by a subsequent order made by the Director on the application of either party to the agreement, as well as by agreement between the parties.
- (6) The Director shall not make an order under this section unless he has first consulted the NRA.
- (7) In exercising his functions under this section, the Director shall have regard to the desirability of—
  - (a) facilitating effective competition within the sewerage services industry;
  - (b) the existing undertaker’s recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the existing undertaker’s being able 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 existing undertaker to meet its existing obligations, or likely future obligations, to provide such services.”

#### **46 Discharges into and from public sewers**

- (1) In section 87 of the Water Resources Act 1991 (discharges into and from public sewers), the following subsections shall be substituted for subsection (1)—

“(1) This section applies for the purpose of determining liability where sewage effluent is discharged as mentioned in subsection (3) or (4) of section 85 above from any sewer or works (“the discharging sewer”) vested in a sewerage undertaker (“the discharging undertaker”).

- (1A) If the discharging undertaker did not cause, or knowingly permit, the discharge it shall nevertheless be deemed to have caused the discharge if—

- (a) matter included in the discharge was received by it into the discharging sewer or any other sewer or works vested in it;
- (b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or works; and
- (c) subsection (1B) below does not apply.

(1B) This subsection applies where the sewage effluent was, before being discharged from the discharging sewer, discharged through a main connection into that sewer or into any other sewer or works vested in the discharging undertaker by another sewerage undertaker (“the sending undertaker”) under an agreement having effect between the discharging undertaker and the sending undertaker under section 110A of the Water Industry Act 1991.

- (1C) Where subsection (1B) above applies, the sending undertaker shall be deemed to have caused the discharge if, although it did not cause, or knowingly permit, the sewage effluent to be discharged into the discharging sewer, or into any other sewer or works of the discharging undertaker—

- (a) matter included in the discharge was received by it into a sewer or works vested in it; and

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*Status: This is the original version (as it was originally enacted).*

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(b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or works.”

(2) The following subsection shall be inserted at the end of section 87 of the Act of 1991—

“(4) In this section “main connection” has the same meaning as in section 110A of the Water Industry Act 1991.”

(3) This section applies only in relation to discharges occurring after it comes into force.

#### **47 Pipe-laying by water or sewerage undertaker in area of another such undertaker**

In section 192 of the Water Industry Act 1991 (interpretation of Part VI of that Act), the following subsections shall be inserted after subsection (3)—

“(3A) A relevant undertaker proposing to exercise any of its powers under section 158 or 159 above outside its own area shall, if subsection (3B) below applies, give notice of its proposal to the water undertaker or (as the case may be) sewerage undertaker for the area in question and, if that subsection applies, shall not carry out its proposal—

- (a) without the consent of that other undertaker; or
- (b) where that other undertaker refuses to give its consent, or fails to give its consent before the end of the period of 28 days beginning with the day on which it is notified of the proposal, without the consent of the Director.

(3B) This subsection applies where the proposal is to lay—

- (a) a water main which is not intended to be—
  - (i) a trunk main; or
  - (ii) a water main used solely for the purpose of supplying water otherwise than for domestic purposes; or
- (b) a sewer which is intended to be a public sewer but not a storm-water overflow sewer.”