



# Water Act 2014

## 2014 CHAPTER 21

### PART 1

#### WATER INDUSTRY

### CHAPTER 1

#### WATER SUPPLY LICENCES AND SEWERAGE LICENCES

#### *Expansion of water supply licensing*

### 1 Types of water supply licence and arrangements with water undertakers

(1) For section 17A of the Water Industry Act 1991 there is substituted—

#### **“17A Water supply licences**

- (1) The Authority may grant to a person a licence in respect of the use of the supply system of a water undertaker (a “water supply licence”).
- (2) A water supply licence may give the holder of the licence one or more of the following authorisations and combination of authorisations—
  - (a) a retail authorisation;
  - (b) a wholesale authorisation;
  - (c) a restricted retail authorisation;
  - (d) a restricted retail authorisation and a supplementary authorisation.
- (3) Schedule 2A makes provision as to the authorisations (including their operation in England and Wales).
- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 3.

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- (5) The Authority may exercise the power to grant a water supply licence only in accordance with a general authorisation given by the Secretary of State.
- (6) Before giving a general authorisation as regards the Authority, the Secretary of State must consult the Welsh Ministers.
- (7) References in this Act to a water supply licensee are references to a person that is the holder for the time being of a water supply licence.

### **17AA Water supply licences: restrictions on grants**

- (1) Before the Authority grants a water supply licence giving a wholesale authorisation, it must consult—
  - (a) the Secretary of State;
  - (b) the Chief Inspector of Drinking Water;
  - (c) the Environment Agency;
  - (d) the NRBW.
- (2) Before the Authority grants a water supply licence giving a supplementary authorisation, it must consult—
  - (a) the Secretary of State;
  - (b) the Chief Inspector of Drinking Water;
  - (c) the Environment Agency;
  - (d) the Welsh Ministers;
  - (e) the Chief Inspector of Drinking Water for Wales if there is one;
  - (f) the NRBW.
- (3) A water supply licence may not be granted to a water undertaker.
- (4) A water supply licence may not be granted to a person unless that person is a limited company.
- (5) The restriction in subsection (4) does not apply if the water supply licence gives only—
  - (a) a retail authorisation,
  - (b) a restricted retail authorisation, or
  - (c) a retail authorisation and a restricted retail authorisation.”
- (2) After Schedule 2 to the Water Industry Act 1991 there is inserted the Schedule set out in Schedule 1.
- (3) Schedule 2 (which amends Chapter 2A of Part 3 of the Water Industry Act 1991 which relates to water undertakers’ duties to enable operations of water supply licensees) has effect.

## **2 The supply system of a water undertaker**

- (1) Section 17B of the Water Industry Act 1991 (guidance and interpretation) is amended as follows.
- (2) After subsection (4) there is inserted—

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“(4A) In this Chapter, references to the supply system of a water undertaker are, in the case of an undertaker whose area is wholly or mainly in England, references to the system comprising the following—

- (a) any reservoirs and other places of storage and any treatment works developed or maintained by the water undertaker for the purpose of complying with its duty under section 37, and
- (b) any water mains and other pipes which it is the water undertaker’s duty to develop and maintain by virtue of section 37.”

(3) In subsection (5) (interpretation of references to the supply system of a water undertaker), after “undertaker are” there is inserted “, in the case of an undertaker whose area is wholly or mainly in Wales,”.

### **3 The threshold requirement**

- (1) The Secretary of State may by order made by statutory instrument repeal section 17A(3)(b) of the Water Industry Act 1991 (the threshold requirement affecting premises in England and Wales), so far as it relates to premises supplied using the supply system of a water undertaker whose area is wholly or mainly in England.
- (2) The Welsh Ministers may by order made by statutory instrument repeal section 17A(3)(b) of the Water Industry Act 1991, so far as it relates to premises supplied using the supply system of a water undertaker whose area is wholly or mainly in Wales.
- (3) The references in subsections (1) and (2) to section 17A of the Water Industry Act 1991 are to the section 17A that is to be repealed (by substitution) by section 1 of this Act.
- (4) The Welsh Ministers may by order made by statutory instrument repeal paragraph 7(b) of Schedule 2A to the Water Industry Act 1991 (inserted by Schedule 1 to this Act).
- (5) An order under subsection (1), (2) or (4) may make such amendments of the Water Industry Act 1991 and this Act as are necessary or appropriate in consequence of the repeal made by the order.
- (6) A statutory instrument containing an order to be made by the Secretary of State under subsection (1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) A statutory instrument containing an order to be made by the Welsh Ministers under subsection (2) or (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

#### *Introduction of sewerage licences*

### **4 Types of sewerage licence and arrangements with sewerage undertakers**

(1) After section 17B of the Water Industry Act 1991 there is inserted—

#### **“17BA Sewerage licences**

- (1) The Authority may grant to a person a licence in respect of the use of the sewerage system of a sewerage undertaker whose area is wholly or mainly in England (a “sewerage licence”).

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- (2) A sewerage licence may give the holder of the licence one or more of the following—
  - (a) a retail authorisation;
  - (b) a wholesale authorisation;
  - (c) a disposal authorisation.
- (3) Schedule 2B makes provision as to the authorisations.
- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 4.
- (5) The Authority may exercise the power to grant a sewerage licence only in accordance with a general authorisation given by the Secretary of State.
- (6) References in this Act to a sewerage licensee are references to a person that is the holder for the time being of a sewerage licence.
- (7) References in this Chapter to the sewerage system of a sewerage undertaker are references to the system comprising—
  - (a) the system of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that the undertaker is required to provide by section 94, and
  - (b) the lateral drains that the undertaker is required to maintain by section 94.

#### **17BB Sewerage licences: restrictions on grants**

- (1) The Authority must consult the Secretary of State, the Environment Agency and the NRBW before granting a licence that gives—
    - (a) a wholesale authorisation, or
    - (b) a disposal authorisation.
  - (2) A sewerage licence granted to a sewerage undertaker may not give the holder—
    - (a) a retail authorisation, or
    - (b) a wholesale authorisation.
  - (3) A sewerage licence may not be granted to a person unless that person is a limited company.
  - (4) The restriction in subsection (3) does not apply if the sewerage licence gives only a retail authorisation.”
- (2) After Schedule 2A to the Water Industry Act 1991 (inserted by section 1) there is inserted the Schedule set out in Schedule 3.
  - (3) Schedule 4 (which amends Part 4 of the Water Industry Act 1991 to add a Chapter 2A relating to arrangements between sewerage undertakers and sewerage licensees) has effect.

*Application as regards Wales*

**5 Water supply and sewerage licensing changes applied as regards Wales**

Schedule 5 (which contains amendments in connection with applying licensing changes to relation to relevant undertakers whose areas are wholly or mainly in Wales) has effect.

*Licensing arrangements between England and Wales and Scotland*

**6 Arrangements with the Water Industry Commission for Scotland**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) After section 17F (procedure for granting and varying licences) there is inserted—

**“17FA Applications forwarded by the Water Industry Commission for Scotland**

- (1) The Secretary of State may by regulations make provision about—
  - (a) treating a 2005 Act application for the grant of a water services licence under section 6 of the 2005 Act as being also an application under section 17F for the grant of a water supply licence giving only a retail authorisation or a restricted retail authorisation or both;
  - (b) treating a 2005 Act application for the grant of a sewerage services licence under section 6 of the 2005 Act as being also an application under section 17F for the grant of a sewerage licence giving only a retail authorisation.
- (2) The regulations may in particular make provision about—
  - (a) the circumstances in which, and the conditions subject to which, a 2005 Act application is to be treated as an application under section 17F for a water supply or sewerage licence giving a particular authorisation or particular authorisations;
  - (b) the time at which an application is to be treated as having been made;
  - (c) the processing of an application by the Authority.
- (3) Provision under subsection (2)(a) may require a 2005 Act application that is forwarded to the Authority—
  - (a) to contain, or to be accompanied by, such information or information of such description as is specified by the regulations;
  - (b) to be accompanied by such documents or documents of such descriptions as are specified by the regulations;
  - (c) to be accompanied by a fee, or a fee of a description, specified by the regulations.
- (4) In this section and section 17FB—
  - “the 2005 Act” means the Water Services etc. (Scotland) Act 2005;
  - “2005 Act application” means an application under paragraph 1 of Schedule 2 to the 2005 Act.

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### **17FB Applications forwarded to the Water Industry Commission for Scotland**

- (1) If the conditions in subsection (2) are satisfied, the Authority must—
- (a) forward to the Commission a copy of an application under section 17F for the grant of a water supply licence or sewerage licence, and
  - (b) send to the Commission such information and such fee as appear to the Authority to be required in order that the application may be treated by the Commission as a 2005 Act application for the grant of—
    - (i) a water services licence under section 6 of the 2005 Act, or
    - (ii) a sewerage services licence under section 6 of the 2005 Act, as the case may be.
- (2) The conditions are that—
- (a) the Authority is requested to do so by the applicant;
  - (b) the application under section 17F appears to the Authority to be an application that would be treated by the Commission as a 2005 Act application for the grant of—
    - (i) a water services licence under section 6 of the 2005 Act, or
    - (ii) a sewerage services licence under section 6 of the 2005 Act, as the case may be;
  - (c) the applicant has given the Authority—
    - (i) such information as is mentioned in subsection (1)(b), and
    - (ii) a means of sending to the Commission such fee as is mentioned in subsection (1)(b).
- (3) The Authority must—
- (a) forward a copy of the application, and
  - (b) send such information and fee as are mentioned in subsection (1)(b), before the end of the agreed period for an application of that description.
- (4) In this section—
- “the agreed period”, in relation to an application under section 17F of a particular description, means the period agreed between the Authority and the Commission as the period applying to an application of that description for the purposes of subsection (3);
- “the Commission” means the Water Industry Commission for Scotland.”

## **7 Arrangements with the Water Services Regulation Authority**

- (1) The Water Services etc. (Scotland) Act 2005 is amended as follows.
- (2) In Schedule 2 (procedure for granting licences), after paragraph 1 there is inserted—

*“Applications forwarded by the Water Services Regulation Authority*

- 1A (1) The Scottish Ministers may by order make provision about—

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- (a) treating an application under section 17F of the 1991 Act for the grant of a water supply licence giving a retail authorisation or a restricted retail authorisation as being also an application under paragraph 1 for the grant of a water services licence;
  - (b) treating an application under section 17F of the 1991 Act for the grant of a sewerage licence giving a retail authorisation as being also an application under paragraph 1 for the grant of a sewerage services licence.
- (2) The order may in particular make provision about—
- (a) the circumstances in which, and the conditions subject to which, an application under section 17F of the 1991 Act is to be treated as an application under paragraph 1 for a water services licence or a sewerage services licence;
  - (b) the time at which an application is to be treated as having been made;
  - (c) the processing of an application by the Commission.
- (3) Provision under sub-paragraph (2)(a) may require an application under section 17F of the 1991 Act that is forwarded to the Commission—
- (a) to include, or be accompanied by, information prescribed by the order;
  - (b) to be accompanied by a fee, or a fee of a description, prescribed by the order.
- (4) In this paragraph and paragraph 1B “the 1991 Act” means the Water Industry Act 1991.

*Applications forwarded to the Water Services Regulation Authority*

- 1B (1) If the conditions in sub-paragraph (2) are satisfied, the Commission must—
- (a) forward to the Authority a copy of an application under paragraph 1 for the grant of a water services licence or sewerage services licence;
  - (b) send to the Authority such information, documents and fee as appear to the Commission to be required in order that the application may be treated by the Authority as an application under section 17F of the 1991 Act for the grant of—
    - (i) a water supply licence giving a retail authorisation or a restricted retail authorisation or both, or
    - (ii) a sewerage licence giving a retail authorisation,as the case may be.
- (2) The conditions are that—
- (a) the Commission is requested to do so by the applicant;
  - (b) the application under paragraph 1 appears to the Commission to be an application that would be treated by the Authority as an application under section 17F of the 1991 Act for the grant of—
    - (i) a water supply licence giving a retail authorisation or a restricted retail authorisation or both, or

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- (ii) a sewerage licence giving a retail authorisation, as the case may be;
- (c) the applicant has given the Commission—
  - (i) such information and documents as are mentioned in sub-paragraph (1)(b), and
  - (ii) a means of sending to the Authority such fee as is mentioned in sub-paragraph (1)(b).
- (3) The Commission must—
  - (a) forward a copy of the application, and
  - (b) send such information, documents and fee as are mentioned in sub-paragraph (1)(b),
 before the end of the agreed period for an application of that description.
- (4) In this paragraph—
  - “the agreed period”, in relation to an application under paragraph 1 of a particular description, means the period agreed between the Commission and the Authority as the period applying to an application of that description for the purposes of sub-paragraph (3);
  - “the Authority” means the Water Services Regulation Authority.”
- (3) In section 6 (grant of water services and sewerage services licences)—
  - (a) in subsection (1), for “paragraphs 1 and 2” there is substituted “paragraphs 1, 1A and 2”;
  - (b) in subsection (3), for “paragraphs 1 and 2” there is substituted “paragraphs 1, 1A and 2”.
- (4) In section 34 (orders and regulations), in subsection (3)(c), after “or (4)” there is inserted “, 1A(1)”.

## CHAPTER 2

### WATER AND SEWERAGE UNDERTAKERS

#### *Arrangements between relevant undertakers*

## 8 Bulk supply of water by water undertakers

- (1) For sections 40 and 40A of the Water Industry Act 1991 (agreements for the bulk supply of water etc) there is substituted—

### “40 Bulk supplies

- (1) This section applies where—
- (a) a qualifying person requests a water undertaker to provide a supply of water in bulk to the qualifying person, or
  - (b) a water undertaker proposes such an arrangement;

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and references in this section to the supplier are references to the water undertaker who is to provide the supply of water.

- (2) In this section “qualifying person” means—
  - (a) a water undertaker;
  - (b) a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the supplier, the Authority may—
  - (a) if it appears to the Authority 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 supplier should give a supply of water in bulk to the qualifying person, and
  - (b) if the Authority is satisfied that the supplier and qualifying person cannot reach agreement within a reasonable time,  
by order require the supplier to give and the qualifying person to take a supply of water in bulk for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency, in particular about whether the proposed supply of water would secure an efficient use of water resources, taking into account the effect on the environment of the proposed supply.
- (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the supplier and the qualifying person.
- (6) If the Authority makes an order under subsection (3) that affects a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
  - (a) the person becomes a water undertaker for the area specified in the order, or
  - (b) the person becomes a water undertaker for an area that includes the area specified in the order (in the case of a water undertaker applying for a variation).
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the supply of water in bulk by a water undertaker to a qualifying person, 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).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement for the supply of water in bulk by a water undertaker to a qualifying person, 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.

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- (9) In exercising its functions under this section, the Authority must 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.
- (10) In this section and section 40A “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 40A(1) which would result in, or which would vary or terminate, a bulk supply agreement, means—
- (a) the Environment Agency, in a case where all parties to the bulk supply agreement are or would be—
    - (i) a water undertaker whose area is wholly in England, or
    - (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the NRBW, in a case where all parties to the bulk supply agreement are or would be—
    - (i) a water undertaker whose area is wholly in Wales, or
    - (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) both the Environment Agency and the NRBW, in any other case.
- (11) In this section and sections 40A to 40J “bulk supply agreement” means an agreement with one or more water undertakers for the supply of water in bulk and includes—
- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
  - (b) any agreement which has been varied by order under section 40A(1).

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

- (1) On the application of any party to a bulk supply agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, that the bulk supply agreement should be varied or terminated, and
  - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement within a reasonable time,
- by order vary or terminate the bulk supply agreement.

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- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency, in particular about whether the proposed variation or termination of the bulk supply agreement would secure an efficient use of water resources, taking into account the effect on the environment of what is proposed.
- (3) If an order under subsection (1) is made in relation to a bulk supply 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).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a bulk supply 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).
- (6) Subsection (5)(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 bulk supply 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.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement in question 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 and sections 40B to 40J—
  - “qualifying person” has the meaning given by section 40;
  - “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.

#### **40B Codes in respect of bulk supply agreements**

- (1) The Authority may issue one or more codes in respect of bulk supply agreements.

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- (2) A code may make provision about—
  - (a) procedures in connection with making a bulk supply agreement;
  - (b) procedures in connection with varying or terminating a bulk supply agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 40(3) or 40A(1);
  - (d) the terms and conditions of a bulk supply agreement, including terms as to the duration of such an agreement;
  - (e) principles for determining the terms and conditions that should or should not be incorporated into a bulk supply agreement;
  - (f) the steps to be taken by the Authority in determining whether a person is complying with a code.
- (3) A code must include provision requiring persons proposing to make, vary or terminate a bulk supply agreement to consult the appropriate agency.
- (4) If the Authority considers that a water undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
- (6) It is the duty of a water undertaker to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make different provision for different persons or different descriptions of person.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to bulk supply agreements made before the revised code comes into force.
- (10) In this section “the appropriate agency”, in relation to a bulk supply agreement or proposed bulk supply agreement, means the body that would be consulted by the Authority under section 40(4) or 40A(2) if an order under section 40(3) or 40A(1) were being considered in relation to the agreement or proposed agreement.

#### **40C Codes under section 40B: procedure**

- (1) Before issuing a code under section 40B, the Authority must—
  - (a) prepare a draft of the proposed code under section 40B;
  - (b) consult the appropriate agency;
  - (c) consult such other persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed code.
- (3) Before a code under section 40B prepared by the Authority is issued, the Minister may direct the Authority—

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- (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 subsection (3) “the Minister” means—
- (a) the Secretary of State, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in England, or
    - (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to bulk supply agreements to which—
    - (i) a person falling within paragraph (a)(i) or (ii) is party, and
    - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such bulk supply agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such bulk supply agreements as are referred to in that paragraph 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 prepared by the Authority in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) In this section “the appropriate agency” means—
- (a) the Environment Agency, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(a)(i) or (ii);
  - (b) the NRBW, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(b)(i) or (ii);
  - (c) both the Environment Agency and the NRBW, in any other case.
- (10) This section is subject to section 40D.

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#### **40D Codes under section 40B: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue a revised code under section 40B 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 40C 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.

#### **40E Rules about charges for the supply of water in bulk**

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a bulk supply agreement.
- (2) The rules may in particular make provision about—
  - (a) what types of charge may be imposed;
  - (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) If the Authority considers that a water 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.
- (4) It is the duty of a water undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—
  - (a) make different provision for different water undertakers or different descriptions of water undertaker;
  - (b) make different provision for different purposes;
  - (c) make provision subject to exceptions.

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- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (7) The Authority must issue revised rules if—
  - (a) guidance is issued under section 40I, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (8) Revised rules may include provision for applying any of their revisions to bulk supply agreements made before the revised rules come into effect.

#### **40F Rules under section 40E: provision about the reduction of charges**

- (1) Rules under section 40E may provide for the reduction of charges payable for a supply of water under a bulk supply agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
  - (a) specify conditions that affect any party to a bulk supply agreement;
  - (b) require that steps be taken for the purpose of reducing or managing water consumption;
  - (c) specify conditions about reducing charges payable by a person who—
    - (i) is not party to the agreement, and
    - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition falling within paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the water undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
  - (a) make provision as to the content of the notice;
  - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
  - (a) the provision of the rules that brings about the reduction in the charge;
  - (b) the amount of the charge, with and without the reduction;
  - (c) the period for which the reduction has effect.

#### **40G Rules under section 40E: procedure**

- (1) Before issuing rules under section 40E, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 40I in making rules under section 40E.

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- (4) Before rules under section 40E prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
- (a) the Secretary of State, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in England, or
    - (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to bulk supply agreements to which—
    - (i) a person falling within paragraph (a)(i) or (ii) is party, and
    - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) A direction under subsection (4) 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.
- (7) This section is subject to section 40H.

#### **40H Rules under section 40E: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 40E 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 40G does not apply to the proposed revised rules.
- (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

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- (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 40G.

#### **40I Rules under section 40E: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 40E.
- (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.
- (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, in relation to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in England, or
    - (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, in relation to bulk supply agreements to which all parties are—

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- (i) a water undertaker whose area is wholly or mainly in Wales, or
- (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
- (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to bulk supply agreements to which—
  - (i) a person falling within paragraph (a)(i) or (ii) is party, and
  - (ii) a person falling within paragraph (b)(i) or (ii) is party.

#### **40J Duty to provide information about bulk supplies**

- (1) A supplier under a bulk supply agreement must provide such information as the appropriate agency may request in relation to water supplied under the agreement.
- (2) The requirement in subsection (1) is enforceable by the Authority under section 18.
- (3) In subsection (1) “the appropriate agency” means the body that would be consulted by the Authority under section 40A(2) if the agreement were to be varied or terminated by an order under section 40A(1).”
- (2) In sections 40A to 40J of the Water Industry Act 1991 (as substituted by subsection (1))
  - (a) a reference to a bulk supply agreement includes a reference to an old bulk supply agreement, and
  - (b) a reference to a supplier, in relation to a bulk supply agreement, is to be construed accordingly.

For these purposes, an old bulk supply agreement is a bulk supply agreement within the meaning of section 40A, as that section had effect before being substituted under subsection (1).

## **9 Main connections into sewerage systems**

- (1) For section 110A of the Water Industry Act 1991 (new connections with public sewers) there is substituted—

#### **“110A Main connections**

- (1) This section applies where—
  - (a) a qualifying person requests a sewerage undertaker to permit a main connection into the established undertaker's sewerage system for the benefit of the qualifying person, or
  - (b) a sewerage undertaker proposes such an arrangement;
 and references in this section to the established undertaker are references to the sewerage undertaker who is to permit the main connection.
- (2) In this section “qualifying person” means—
  - (a) a sewerage undertaker, or

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- (b) a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the established undertaker, the Authority may—
  - (a) if it appears to the Authority that it is necessary or expedient for the purposes of this Part that the established undertaker should permit a main connection into its sewerage system, and
  - (b) if the Authority is satisfied that the established undertaker and qualifying person cannot reach agreement,by order require the established undertaker to permit the connection for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency.
- (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the established undertaker and the qualifying person.
- (6) If the Authority makes an order under subsection (3) on the application of a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
  - (a) the person becomes a sewerage undertaker for the area specified in the order, or
  - (b) the person becomes a sewerage undertaker for an area that includes the area specified in the order (in the case of a sewerage undertaker applying for a variation).
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement with a sewerage undertaker for it to permit a main connection into its sewerage system for the benefit of a qualifying person, 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).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with such agreement as is mentioned in subsection (7), 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.
- (9) 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 established 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 established undertaker’s being able to meet its existing obligations, and likely future obligations, to provide sewerage

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- services without having to incur unreasonable expenditure in carrying out works;
- (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (10) In this section and section 110B “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 110B(1) which would result in, or which would vary or terminate, a main connection agreement, means—
- (a) the Environment Agency, in a case where all parties to the main connection agreement are or would be—
- (i) a sewerage undertaker whose area is wholly in England, or
- (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
- (b) the NRW, in a case where all parties to the main connection agreement are or would be—
- (i) a sewerage undertaker whose area is wholly in Wales, or
- (ii) a person who would, if the person’s application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
- (c) both the Environment Agency and the NRW, in any other case.
- (11) In this section and sections 110B to 110J—
- “main connection” means—
- (a) a connection 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;
- “main connection agreement” means an agreement with one or more sewerage undertakers for that undertaker or each of them to permit a main connection into its sewerage system and includes—
- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
- (b) any agreement which has been varied by order under section 110B(1).

### **110B Variation and termination of main connection agreements**

- (1) On the application of any party to a main connection agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of this Part that the main connection agreement should be varied or terminated, and
- (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement,
- by order vary or terminate the main connection agreement.
- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency.

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- (3) If an order under subsection (1) is made in relation to a main connection 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).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a main connection 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).
- (6) Subsection (5)(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 main connection 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.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the established undertaker in complying with its obligations under the main connection agreement in question and to the desirability of—
  - (a) facilitating effective competition within the sewerage services industry;
  - (b) the established 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 established 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 established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (8) In this section and sections 110C to 110J “established undertaker”, in relation to a sewerage agreement, means the sewerage undertaker which is required by the agreement to permit a main connection into its sewerage system.

### **110C Codes in respect of main connection agreements**

- (1) The Authority may issue one or more codes in respect of main connection agreements.
- (2) A code may make provision about—
  - (a) procedures in connection with making an agreement to permit a main connection into a sewerage undertaker’s sewerage system;

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- (b) procedures in connection with varying or terminating a main connection agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 110A(3) or 110B(1);
  - (d) the terms and conditions of a main connection agreement, including terms as to the duration of such an agreement;
  - (e) principles for determining the terms and conditions that should or should not be incorporated into a main connection agreement;
  - (f) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) If the Authority considers that a sewerage undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) The Authority may not give a direction under subsection (3) requiring a person to enter into, vary or terminate an agreement.
- (5) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (6) A code may make different provision for different persons or different descriptions of person.
- (7) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (8) A revised code may include provision for applying any of its revisions to main connection agreements made before the revised code comes into force.

#### **110D Codes under section 110C: procedure**

- (1) Before issuing a code under section 110C, the Authority must—
- (a) prepare a draft of the proposed code under section 110C, 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 110C 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 subsection (3) “the Minister” means—
- (a) the Secretary of State, so far as a code prepared by the Authority relates to main connection agreements under which—
    - (i) the main connection into a sewerage system, or
    - (ii) each such connection,

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- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
- (b) the Welsh Ministers, so far as a code prepared by the Authority relates to main connection agreements under which—
- (i) the main connection into a sewerage system, or
  - (ii) each such connection,
- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
- (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
  - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such main connection agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such main connection agreements as are referred to in that paragraph 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.

#### **110E Codes under section 110C: minor or urgent revisions**

- (1) This section applies if the Authority propose to issue a revised code under section 110C 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 110D does not apply to the 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

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- (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.

### **110F Rules about charges for permitting main connections**

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a main connection agreement.
- (2) The rules may in particular make provision about—
  - (a) what types of charge may be imposed;
  - (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) 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.
- (4) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—
  - (a) make different provision for different sewerage undertakers or different descriptions of sewerage undertaker;
  - (b) make different provision for different purposes;
  - (c) make provision subject to exceptions.
- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (7) The Authority must issue revised rules if—
  - (a) guidance is issued under section 110J, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (8) Revised rules may include provision for applying any of the revisions to main connection agreements made before the revised rules come into effect.

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### **110G Rules under section 110F: provision about the reduction of charges**

- (1) Rules under section 110F may provide for the reduction of charges payable under a main connection agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
  - (a) specify conditions by reference to any party to a main connection agreement;
  - (b) require that steps be taken for the purpose of reducing the cost to a sewerage undertaker of permitting a main connection into its sewerage system;
  - (c) specify conditions about reducing charges payable by a person who—
    - (i) is not party to the agreement, and
    - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition falling within paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the sewerage undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
  - (a) make provision as to the content of the notice;
  - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
  - (a) the provision of the rules that brings about the reduction in the charge;
  - (b) the amount of the charge, with and without the reduction;
  - (c) the period for which the reduction has effect.

### **110H Rules under section 110F: procedure**

- (1) Before issuing rules under section 110F, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 110J in making rules under section 110F.
- (4) Before rules under section 110F prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
  - (a) the Secretary of State, so far as rules prepared by the Authority relate to main connection agreements under which—
    - (i) the main connection into a sewerage system, or
    - (ii) each such connection,

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- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
- (b) the Welsh Ministers, so far as rules prepared by the Authority relate to main connection agreements under which—
- (i) the main connection into a sewerage system, or
  - (ii) each such connection,
- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
- (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
  - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.
- (6) A direction under subsection (4) 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.
- (7) This section is subject to section 110I.

#### **110I Rules under section 110F: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 110F 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 110H does not apply to the proposed revised rules.
- (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,

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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 110H.

#### **110J Rules under section 110F: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 110F.
- (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 Welsh Ministers;
  - (b) the Secretary of State;
  - (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.
- (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, in relation to main connection agreements under which—
    - (i) any main connection into a sewerage system, or
    - (ii) each such connection,is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
  - (b) the Welsh Ministers, in relation to main connection agreements under which—
    - (i) any main connection into a sewerage system, or
    - (ii) each such connection,

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- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
- (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
  - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.”
- (2) In sections 110B to 110J of the Water Industry Act 1991 (as substituted by subsection (1))—
- (a) a reference to a main connection agreement includes a reference to an old main connection agreement, and
  - (b) a reference to an established undertaker, in relation to a main connection agreement, is to be construed accordingly.
- (3) For the purposes of subsection (2)—
- (a) “old main connection agreement” means an agreement made before the coming into force of subsection (1) that is an agreement with one or more sewerage undertakers for that undertaker or each of them to permit a main connection into its sewerage system, and includes an order under old section 110A which is deemed to be an agreement by virtue of old section 110A(5);
  - (b) references to old section 110A are references to section 110A, as that section had effect before being substituted under subsection (1).

### *Agreements to adopt infrastructure*

## **10 Agreements by water undertakers to adopt infrastructure**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 51A (agreements to adopt a water main or service pipe at a future date)—
- (a) in subsection (3) (application to make an agreement under section 51A), for the words from “make an application” to the end there is substituted “request a water undertaker to make an agreement under this section.”;
  - (b) subsections (4) to (8) are repealed;
  - (c) after subsection (9) there is inserted—
- “(9A) The reference in subsection (9) to an agreement made under this section includes a reference to—
- (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
  - (b) an agreement which has been varied by order under section 51C(1).”

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- (3) For section 51B (appeals with respect to adoption) and section 51C (financial conditions of compliance) there is substituted—

**“51B Adoption at a future date: orders by Authority**

- (1) This section applies where a person constructing or proposing to construct a water main or service pipe makes a request to a water undertaker under section 51A(3).
- (2) The person or the water undertaker may apply to the Authority for an order under subsection (4) if the person and the water undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the water undertaker, make an order under subsection (4) if the Authority is satisfied that—
  - (a) it is appropriate for work proposed to be done by a person other than the water undertaker to be so done, and
  - (b) the person and the water undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—
  - (a) require the water undertaker to give such undertakings as to the vesting of the water main or service pipe 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 51A between the person and the water undertaker.
- (6) The Authority may not, by order under subsection (4), require a water undertaker to vest in itself a water main or service pipe as regards which there is a contravention of any of the requirements of section 74 that are prescribed for the purposes of this subsection.
- (7) The Authority may not make an order under subsection (4) with respect to a water main or service pipe that is situated within the area of another water undertaker, until either—
  - (a) that other 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 water undertaker whose area is wholly or mainly in England;
  - (b) the Welsh Ministers, as regards the consent of a water 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 water main or service pipe in a water undertaker at a future date, the powers conferred by—

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- (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 water main or service pipe at a future date, 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 water supply industry;
  - (b) the recovery by the water 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 water undertaker 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 water undertaker to meet its existing obligations, or likely future obligations, to supply water.

### **51C Variation and termination of section 51A agreements**

- (1) On the application of a party to a section 51A 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 51A agreement should be varied (or terminated),
  - (b) if the Authority is satisfied, in the case of an application to vary the agreement, that it is appropriate for work proposed to be done by a person other than the water 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 51A agreement.
- (2) If an order under subsection (1) is made in relation to a section 51A 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 51A 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).

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- (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 51A 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 water undertaker in complying with its obligations under the section 51A agreement in question and to the desirability of—
- (a) facilitating effective competition within the water supply industry;
  - (b) the recovery by the water 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 water undertaker 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 water undertaker to meet its existing obligations, or likely future obligations, to supply water.
- (7) In this section and sections 51CA to 51CG “section 51A agreement” means an agreement with a water undertaker for the vesting of a water main or service pipe in a water undertaker at a future date and includes—
- (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
  - (b) any agreement which has been varied by order under subsection (1).

### **51CA Codes in respect of section 51A agreements**

- (1) The Authority must issue a code in respect of section 51A agreements.
- (2) The code may make provision about—
- (a) procedures in connection with making an agreement under section 51A;
  - (b) procedures in connection with varying or terminating a section 51A agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 51B(4) or 51C(1);
  - (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a water undertaker;
  - (e) the terms and conditions of a section 51A agreement;
  - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 51A 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)(c) may in particular require the Authority to consult—

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- (a) the Chief Inspector of Drinking Water;
  - (b) the Chief Inspector of Drinking Water for Wales if there is one.
- (4) 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.
- (5) 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 water undertaker;
  - (c) constructing water mains so as to meet additional supply requirements;
  - (d) connecting new water mains or service pipes to the existing supply system of a water undertaker;
  - (e) complying with requirements of the kind referred to in section 47(2);
  - (f) the duration of a section 51A agreement.
- (6) If the Authority considers that a water 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.
- (7) The Authority may not give a direction under subsection (6) requiring a person to enter into, vary or terminate an agreement.
- (8) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (9) The code may make different provision for different persons or descriptions of person.
- (10) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (11) A revised code may include provision for applying any of its revisions to section 51A agreements made before the revised code comes into force.

#### **51CB Codes under section 51CA: procedure**

- (1) Before issuing a code under section 51CA, the Authority must—
- (a) prepare a draft of the proposed code under section 51CA, and
  - (b) consult the relevant persons about the proposed code.
- (2) The relevant persons are—
- (a) the Chief Inspector of Drinking Water;
  - (b) the Chief Inspector of Drinking Water for Wales if there is one;
  - (c) such other persons as the Authority considers appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (4) Before a code under section 51CA prepared by the Authority is issued, the Minister may direct the Authority—

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- (a) not to issue the code, or
  - (b) to issue the code with specified modifications.
- (5) Subsection (4) is subject to subsections (7) and (8).
- (6) In subsection (4) “the Minister” means—
  - (a) the Secretary of State, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) The power under subsection (4) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (8) If the power under subsection (4) 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 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.
- (9) A direction under subsection (4) 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.
- (10) This section is subject to section 51CC.

#### **51CC Codes under section 51CA: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue a revised code under section 51CA 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 51CB 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.

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### **51CD Rules about charges in connection with a section 51A agreement**

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a section 51A agreement.
- (2) The rules may in particular make provision about—
  - (a) what types of charge may be imposed;
  - (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 water undertaker, upon declaring a water main or service pipe to be vested in the undertaker in accordance with a section 51A 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 water main or service pipe in question;
  - (b) costs that might have been incurred in providing such a water main or service pipe.
- (5) The rules may also make provision as to—
  - (a) the amount of security that may be required by a water undertaker for the purposes of any charges imposed by the water undertaker under a section 51A agreement;
  - (b) the type of security that may be required;
  - (c) the payment of interest on a sum deposited with a water undertaker by way of security.
- (6) If the Authority considers that a water 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 water 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 water 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 51CG, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.

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- (11) Revised rules may include provision for applying any of their revisions to section 51A agreements made before the revised rules come into effect.

**51CE Rules under section 51CD: procedure**

- (1) Before issuing rules under section 51CD, 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 water 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 51CG in making rules under section 51CD.
- (5) Before rules under section 51CD 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 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the rules relate to section 51A agreements for the vesting of water mains or service pipes in water 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 51CF.

**51CF Rules under section 51CD: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 51CD 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 51CE does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.

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- (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 51CE.

#### **51CG Rules under section 51CD: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 51CD.
- (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.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—

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- (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 51A agreements for the vesting of water mains or service pipes in water 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 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.”
- (4) In section 51E (sections 51A to 51D: supplementary), in subsection (2), for “In sections 51A to 51C above” there is substituted “In section 51A”.

## **11 Agreements by sewerage undertakers to adopt infrastructure**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 104 (agreements to adopt a sewer, drain or sewage disposal works at a future date)—
- (a) in subsection (2) (application to make an agreement under section 104), for the words from “make an application” to the end there is substituted “request a sewerage undertaker to make an agreement under this section.”;
  - (b) subsections (3), (4) and (6A) are repealed;
  - (c) after subsection (5) there is inserted—
    - “(5A) The reference in subsection (5) to an agreement made under this section includes a reference to—
    - (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 section 105ZB(1).”
- (3) After section 105 there is inserted—

### **“105ZA 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 disapplied 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;

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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.

### **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—

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- (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;
  - (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).

#### **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;
  - (c) making a communication with public sewers.

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- (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.

#### **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 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.

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- (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.

**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.

**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;
  - (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.

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- (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.

#### **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.

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- (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.

**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.
- (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).

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- (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.

#### **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.
- (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.”
- (4) In section 107 (right of sewerage undertaker to undertake the making of communications with public sewers), after subsection (1) there is inserted—
  - “(1A) A sewerage undertaker may not give notice to a person under subsection (1) if—
    - (a) the undertaker and the person entered into an agreement under section 104, and
    - (b) the agreement provides for the communication to which the person’s proposal relates to be made by the person.”

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- (5) In section 108 (communication works by person entitled to communication), in subsection (1), after “section 106 above” there is inserted “or may not make such an election because of section 107(1A)”.

*Arrangements for water undertakers to take water*

## 12 Arrangements for water undertakers to take water from other persons

In Part 3 of the Water Industry Act 1991, after Chapter 2A there is inserted—

### “CHAPTER 2B

#### ADDITIONAL SOURCES OF WATER

#### **66M Arrangements for water undertakers to take water from other persons**

- (1) The Minister may by regulations make provision about the supply of water to a water undertaker by a person other than a water undertaker.
- (2) Regulations under this section may, in particular—
  - (a) confer functions on the Authority, the Secretary of State and the Welsh Ministers;
  - (b) make provision preventing the CMA or the Authority from exercising powers under the Competition Act 1998 in respect of a water supply agreement;
  - (c) include provision described in sections 66N and 66O;
  - (d) make provision excepting water supply agreements of such description as the regulations may specify from the effect of—
    - (i) any provision of the regulations, or
    - (ii) any provision of the codes or rules made under the regulations.
- (3) In this Chapter—
 

“the Minister” means—

  - (a) the Secretary of State, in relation to the supply of water to a water undertaker whose area is wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to the supply of water to a water undertaker whose area is wholly or mainly in Wales;

“relevant person” means a person other than a water undertaker;

“water supply agreement” means an agreement for the supply of water to a water undertaker by a relevant person.
- (4) Nothing in provision made under this Chapter affects a water supply agreement made before any regulations under this section first come into force.

#### **66N Orders in respect of supplies by relevant persons**

- (1) Regulations under section 66M may, in particular, make provision for the Authority by order—

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- (a) to require a water undertaker to take a supply of water from a relevant person, and
  - (b) to vary or terminate a water supply agreement.
- (2) Provision made under subsection (1)(a) must provide that—
- (a) the Authority may make an order only on an application by the water undertaker or the relevant person, and
  - (b) before making an order the Authority must be satisfied that the water undertaker and the relevant person cannot reach agreement.
- (3) Provision made under subsection (1)(b) must provide that the Authority may make an order only on an application by a party to the agreement.
- (4) The provision that may be made under subsection (1) includes—
- (a) provision about the circumstances in which the Authority may make an order;
  - (b) provision requiring the Authority to consult the Environment Agency, the NRBW or both of them before making an order;
  - (c) provision requiring the Authority to have regard to whether a person has complied with a code or rules described in section 66O;
  - (d) provision enabling the Authority to specify the times at which, the period during which and the terms and conditions on which the supply of water must be taken;
  - (e) provision for an order made by the Authority requiring a supply of water to be taken to have effect as an agreement between the water undertaker and the relevant person (or those persons and other persons);
  - (f) provision requiring a party to a water supply agreement to pay compensation to another party on the variation or termination of the agreement.

### **66O Codes and rules in respect of water supply agreements**

- (1) Regulations under section 66M may, in particular, make provision for the Authority to issue one or more codes in respect of water supply agreements, including—
- (a) provision for a code to include provision about procedures in connection with making, varying or terminating a water supply agreement;
  - (b) provision for a code to include provision about the terms and conditions of water supply agreements;
  - (c) provision for a code to include provision about procedures to be followed by the Authority in determining whether to make an order described in section 66N;
  - (d) provision for the Authority to direct water undertakers to comply with a code;
  - (e) provision for such directions to be enforceable by the Authority under section 18;
  - (f) provision for the Minister to require a code to be revised or to prevent a code being issued or revised (but see subsections (3) and (4)).

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- (2) Regulations under section 66M may, in particular, make provision for the Authority to issue and enforce rules about charges that may be imposed under water supply agreements, including—
- (a) provision for the making of rules about the amount or maximum amount of a charge;
  - (b) provision for the Authority to direct water undertakers to comply with the rules;
  - (c) provision for such directions to be enforceable by the Authority under section 18;
  - (d) provision for the Minister to issue guidance as to the content of the rules (but see subsection (4));
  - (e) provision for the Minister to prevent rules being issued (but see subsection (4)).
- (3) Regulations conferring a power on the Minister as described in subsection (1) (f) must provide that—
- (a) if the power is exercised to impose a requirement in respect of agreements for such supplies of water as are referred to in paragraph (a) or (b) of the definition of “the Minister” in section 66M(3), it may not be exercised again in respect of such supplies of water as are referred to in that paragraph, and
  - (b) if the power to impose a requirement in respect of agreements for such supplies of water as are referred to in paragraph (a) or (b) of the definition of “the Minister” in section 66M(3) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such agreements as are referred to in that paragraph on a later occasion.
- (4) Functions conferred by provision described in subsection (1)(f) or (2)(d) or (e) must be conferred on the Secretary of State and the Welsh Ministers acting jointly so far as the code, guidance or rules relate to—
- (a) a supply of water to a water undertaker whose area is wholly or mainly in England by means of the supply system of a water undertaker whose area is wholly or mainly in Wales;
  - (b) a supply of water to a water undertaker whose area is wholly or mainly in Wales by means of the supply system of a water undertaker whose area is wholly or mainly in England.
- (5) References in this section to a water undertaker’s supply system are to be construed in accordance with section 17B.

### **66P Procedure etc**

- (1) A statutory instrument containing regulations under section 66M may not be made unless a draft of the instrument has been laid before and approved by a resolution of—
- (a) each House of Parliament, in the case of regulations made by the Secretary of State, or
  - (b) the Assembly, in the case of regulations made by the Welsh Ministers.

- (2) Before laying a draft of an instrument in accordance with subsection (1), the Minister must consult—
  - (a) the Authority,
  - (b) water undertakers,
  - (c) water supply licensees,
  - (d) the Chief Inspector of Drinking Water,
  - (e) the Chief Inspector of Drinking Water for Wales if there is one,
  - (f) the Environment Agency,
  - (g) the NRBW,
  - (h) the Council, and
  - (i) such other persons as the Minister considers appropriate.
- (3) The supplemental and consequential provision that regulations under section 66M may include by virtue of section 213(2)(f) includes provision amending, repealing or revoking provision made by or under an enactment.
- (4) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 66M as it applies to regulations made by the Secretary of State.
- (5) If a draft of an instrument containing regulations under section 66M would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.
- (6) In this section “enactment” includes a Measure or Act of the Assembly.”

#### *Appointments and variations*

### **13 Procedure with respect to appointments and variations**

- (1) Section 8 of the Water Industry Act 1991 (procedure with respect to appointments and variations replacing relevant undertakers) is amended as follows.
- (2) In subsection (2)(a) (the Water Services Regulation Authority to serve notice of application), for “on the existing appointee the NRA and on every” there is substituted “on—
  - (i) the existing appointee,
  - (ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
  - (iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
  - (iv) the appropriate agency, and
  - (v) every”.
- (3) In subsection (4)(b) (the Secretary of State or the Water Services Regulation Authority to serve notice of proposed appointment or variation), for “on the existing appointee the NRA and on every” there is substituted “on—

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- (i) the existing appointee,
  - (ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
  - (iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
  - (iv) the appropriate agency, and
  - (v) every”.
- (4) In subsection (5)(b) (the Secretary of State or the Water Services Regulation Authority to serve notice of the making of an appointment or variation), for “on the NRA and on every” there is substituted “on—
- (i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
  - (ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
  - (iii) the appropriate agency, and
  - (iv) every”.
- (5) After subsection (6) insert—
- “(6A) In this section “the appropriate agency”, in relation to the replacement of a relevant undertaker, means—
- (a) the Environment Agency, if the undertaker’s area is wholly in England;
  - (b) the NRBW, if the undertaker’s area is wholly in Wales;
  - (c) both the Environment Agency and the NRBW, if the undertaker’s area is partly in England and partly in Wales.”

*Duty of CMA to refer mergers of relevant undertakers*

## **14 Exceptions to duty and undertakings in lieu of merger references**

- (1) In section 32 of the Water Industry Act 1991 (duty to refer merger of water or sewerage undertaking), for “Subject to section 33 below,” there is substituted “Subject to sections 33 and 33A below,”.
- (2) After section 33 (exclusion of small mergers) there is inserted—

### **“33A Exceptions to duty to make reference**

- (1) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(a) if it believes that—

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- (a) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a merger reference;
  - (b) the prospective merger is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
  - (c) the prospective merger is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (2) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(b) if it believes that—
- (a) the merger has not prejudiced and is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
  - (b) the merger has prejudiced or is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (3) Before forming a view as to the matters in subsection (1)(b) or (c) or (2)(a) or (b), the CMA must—
- (a) request the Authority to give an opinion under section 33B, and
  - (b) consider that opinion.
- (4) The CMA may not make a merger reference under section 32 if—
- (a) it is considering whether to accept an undertaking under section 33D instead of making such a reference; or
  - (b) it is prevented by section 74 of the Enterprise Act 2002 (effect of accepting an undertaking in lieu), in a case where that section as applied by paragraph 1 of Schedule 4ZA may have effect to prevent such a merger reference.
- (5) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA.

### **33B Opinion of the Authority**

- (1) Where the CMA makes a request under section 33A(3), the Authority must give its opinion on—
- (a) whether and to what extent the actual or prospective merger has prejudiced or is likely to prejudice the Authority’s ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises, and
  - (b) where it forms the view that the actual or prospective merger has prejudiced or is likely to prejudice that ability, whether the prejudice in question is outweighed by any relevant customer benefits relating to the merger.
- (2) In forming an opinion on the matters in subsection (1), the Authority must apply the methods set out in the statement under section 33C that has effect when the request under section 33A(3) is made.

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- (3) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of this section as references to what the Authority believes.

### **33C Statement of methods**

- (1) The Authority must prepare and keep under review a statement of the methods to be applied in forming an opinion on the matters in section 33B(1).
- (2) The statement must in particular set out—
- (a) the criteria to be used for assessing the effect of any particular water enterprise ceasing to be a distinct enterprise on the Authority’s ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises;
  - (b) the relative weight to be given to the criteria.
- (3) Before preparing or altering the statement, the Authority must consult—
- (a) the Secretary of State,
  - (b) the Welsh Ministers,
  - (c) the CMA, and
  - (d) relevant undertakers.
- (4) The Authority must from time to time publish the statement as it has effect for the time being.”
- (3) After section 33C (inserted by subsection (2)) there is inserted—

### **“33D Undertakings in lieu of a merger reference**

- (1) If the CMA considers that it is under a duty to make a merger reference under section 32, it may instead of making such a reference accept undertakings to take such action as it thinks appropriate from such of the parties concerned in the actual or prospective merger as it considers appropriate.
- (2) The power under subsection (1) is to be exercised for the purpose of remedying, mitigating or preventing the prejudicial effect on the Authority’s ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises that the actual or prospective merger has had, may have had or may be likely to have.
- (3) In forming a view for the purposes of subsection (1) as to whether it is under a duty to make a merger reference under section 32, the CMA—
- (a) is to disregard the effect of section 33A(4)(a), but
  - (b) is to take into account the powers under section 33A(1) and (2) to decide not to make a merger reference.
- (4) In proceeding under subsection (1), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudicial effect on the Authority’s ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises.

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- (5) In proceeding under subsection (1), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the actual or prospective merger.
- (6) Before deciding whether or not to accept an undertaking under this section, the CMA must—
  - (a) request the Authority to give its opinion on the effect of the undertakings offered, and
  - (b) consider the Authority’s opinion.
- (7) Where the CMA makes a request under subsection (6), the Authority must give its opinion on the effect of the undertakings offered.
- (8) An undertaking under this section—
  - (a) comes into force when accepted;
  - (b) may be varied or superseded by another undertaking under this section;
  - (c) may be released by the CMA.
- (9) An undertaking under this section ceases to be in force if an order under section 75 or 76 of the Enterprise Act 2002 (powers to make an order where an undertaking is not fulfilled) is made, in a case where that provision of the Enterprise Act 2002 as applied by paragraph 1 of Schedule 4ZA may have effect in relation to such an undertaking.
- (10) The CMA must consider any representations received by it in relation to varying or releasing an undertaking under this section as soon as reasonably practicable.
- (11) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of subsection (7) as references to what the Authority believes.”

## **15 Exclusion of small mergers: advice of CMA on threshold**

In section 33 of the Water Industry Act 1991 (exclusion of small mergers from the duty to make a merger reference under section 32), after subsection (6) there is inserted—

- “(6A) The CMA must—
- (a) keep under review the conditions set out in subsection (1)(a) and (b), and
  - (b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.”

### *Relevant undertakers' charges*

## 16 Charges schemes

- (1) In section 143 of the Water Industry Act 1991 (charges schemes), for subsections (6) to (9) (charges scheme not to take effect until approved by the Water Services Regulation Authority, etc), there is substituted—

“(6) If the Authority considers that a relevant undertaker’s charges scheme does not comply with—

- (a) subsection (2), (3) or (5),
- (b) regulations under section 143A,
- (c) rules under section 143B, or
- (d) section 144A(9), (10) or (11)(a),

the Authority may give the undertaker a direction to do, or not to do, a thing specified in the direction.

(6A) The Authority must issue rules (and, if it revises rules it has issued, must issue revised rules) about consulting the Council about proposed charges schemes.

(6B) The rules must require a relevant undertaker that proposes to make a charges scheme to consult the Council about its proposed scheme.

(6C) If the Authority considers that a relevant undertaker has not complied with those rules, it may give the undertaker a direction to do, or not to do, a thing specified in the direction.

(6D) It is the duty of a relevant undertaker to comply with a direction under subsection (6) or (6C), and this duty is enforceable by the Authority under section 18.”

- (2) After section 143A there is inserted—

#### **“143B Rules about charges schemes**

(1) The Authority may issue rules about charges schemes under section 143.

(2) Rules under this section may in particular—

- (a) make provision about the types of charges that may be imposed;
- (b) make provision about the amount or maximum amount, or the methods for determining the amount or maximum amount, of any type of charge;
- (c) make provision about the principles for determining what types of charges may or may not be imposed;
- (d) make provision about principles for determining the amount of any charge that may be imposed;
- (e) require particular schemes of charges to be available in specified cases;
- (f) make provision about the timing of payment of charges;
- (g) require charges schemes to be published;
- (h) make provision about how charges schemes are to be published.

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- (3) The rules may provide for the reduction of charges under a charges scheme where conditions specified by the rules are satisfied.
- (4) Rules made by virtue of subsection (3) may in particular specify conditions about—
  - (a) taking steps for the purpose of reducing or managing water consumption;
  - (b) taking steps for the purpose of reducing or managing the discharge of matter from premises;
  - (c) taking steps for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.
- (5) The provisions of charges schemes must comply with rules issued under this section.
- (6) The rules may make different provision for different cases, including different provision in relation to different, or different descriptions of, persons, circumstances or localities.
- (7) The power to make rules under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.
- (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (9) The Authority must issue revised rules if—
  - (a) guidance is issued under section 143E, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (10) Revised rules may include provision for applying any of their revisions to charges schemes under section 143 made before the revised rules come into effect.

### **143C Rules under section 143B: procedure**

- (1) The Authority must have regard to guidance issued under section 143E in making rules under section 143B (as well as to any guidance issued under section 43 or 44 of the Flood and Water Management Act 2010).
- (2) Before issuing rules under section 143B, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any relevant undertakers likely to be affected by the rules;
  - (e) such other persons as the Authority thinks appropriate.

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

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- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed rules.
- (5) Before rules under section 143B 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 in question affect relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the rules in question affect relevant 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 prepared by the Authority may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 143D.

**143D Rules under section 143B: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 143B 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 143C does not apply to the proposed revised rules.
- (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.

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- (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 143C.

#### **143E Rules under section 143B: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 143B.
- (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.
- (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, in relation to relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.”

### **17 Rules about charges for connections etc**

After section 144 of the Water Industry Act 1991 there is inserted—

#### *“Rules about undertakers’ charges*

#### **144ZA Rules about charges for connections etc**

- (1) The Authority may issue rules about charges that may be imposed by a relevant undertaker under—
- (a) section 42(2)(a) (provision of new water main);
  - (b) section 45(6) (connections with water main);
  - (c) section 46(7)(b) (ancillary works for domestic connection);
  - (d) section 99(2)(a) or (2A)(a) (provision of public sewer or lateral drain);
  - (e) section 101B(3) (lateral drains);
  - (f) section 107(3)(b)(i) (communications with public sewers);

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

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- (g) section 185(5) (moving of pipes etc).
- (2) Rules under this section may in particular—
  - (a) make provision about the types of charges that may be imposed;
  - (b) make provision about the amount or maximum amount, or the methods for determining the amount or maximum amount, of any type of charge;
  - (c) make provision about the principles for determining what types of charges may or may not be imposed;
  - (d) make provision about the principles for determining the amount of any charge that may be imposed;
  - (e) provide for charges to be payable over a period;
  - (f) make provision about publication of the charges that may be imposed.
- (3) The charges that may be imposed by a water undertaker under section 42(2)(a) for the provision of a new water main may include charges for—
  - (a) providing such other infrastructure, including other water mains, as it is necessary to provide in consequence of the provision of the new water main;
  - (b) doing works to increase the capacity of an existing water main, or procuring the doing of such works, where the use of that increased capacity is a consequence of the provision of the new water main.
- (4) The charges that may be imposed by a sewerage undertaker under section 99(2) (a) for the provision of a new public sewer may include charges for—
  - (a) providing such other infrastructure, including other public sewers, as it is necessary to provide in consequence of the provision of the new public sewer;
  - (b) doing works to increase the capacity of an existing public sewer, where the use of that increased capacity is a consequence of the provision of the new public sewer.
- (5) The rules may make provision as to—
  - (a) the amount of security that may be required by a relevant undertaker under section 42(1)(b), 47(2)(a), 99(1)(b), 101B(3A), 107(3)(b)(ii) or 185(4);
  - (b) the type of security that may be required;
  - (c) the payment of interest on a sum deposited with a relevant undertaker by way of security.
- (6) If the Authority considers that a relevant 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 thing specified in the direction.
- (7) It is the duty of a relevant 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—
  - (a) different provision for different persons or different descriptions of person;
  - (b) different provision for different powers to impose charges or different descriptions of such powers.

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- (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 144ZD, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.

#### **144ZB Rules under section 144ZA: procedure**

- (1) The Authority must have regard to guidance issued under section 144ZD in making rules under section 144ZA.
- (2) Before issuing rules under section 144ZA, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any relevant undertakers likely to be affected by the rules;
  - (e) any water supply or sewerage licensees likely to be affected by the rules;
  - (f) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed rules.
- (5) Before rules under section 144ZA 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 in question affect relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the rules in question affect relevant 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 prepared by the Authority may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 144ZC.

#### **144ZC Rules under section 144ZA: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 144ZA 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.

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- (2) Section 144ZB does not apply to the proposed revised rules.
- (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 144ZB.

#### **144ZD Rules under section 144ZA: guidance**

- (1) The Minister must issue guidance as to the content of rules under section 144ZA.
- (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.

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- (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, in relation to relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.”

## **18 Charges for providing a water main etc**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 42 (financial conditions for compliance with the duty in section 41 to provide a water main)—
  - (a) in subsection (1)(b) (condition as to providing security), for the words from “such security” to “reasonably required” there is substituted “such security as charging rules allow and the undertaker may have required”;
  - (b) in subsection (2) (undertaking to pay), for paragraph (a) there is substituted—
    - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
  - (c) subsections (4) and (5) (interest on sums deposited by way of security) are repealed;
  - (d) in subsection (6) (reference of disputes to Water Services Regulation Authority), in paragraph (b), after “the amount” there is inserted “or amounts by way of charges”.
- (3) In section 45 (duty to make domestic connections to a water main)—
  - (a) in subsection (2) (the nature of the duty), the words “, at the expense of the person serving the notice,” are repealed;
  - (b) for subsection (6) there is substituted—
    - “(6) Where a water undertaker carries out any works which it is its duty under this section to carry out, the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules.”;
  - (c) in subsection (6A) (reference of disputes to Authority), for “as to whether the expenses were incurred reasonably” there is substituted “as to the payments required to be made”.
- (4) In section 46 (duty to carry out ancillary works for the purpose of making a domestic connection under section 45)—
  - (a) in subsection (1) (the nature of the duty), the words “, at the expense of the person serving the notice,” are repealed;
  - (b) in subsection (7), in paragraph (b), for “under this section at another person’s expense” there is substituted “as its duty under this section”;
  - (c) in subsection (7), in the words after paragraph (b), for “under that section at another person’s expense” there is substituted “as its duty under that section”;

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- (d) in subsection (9) (consequences of exercising power under section 46(8) to lay a water main rather than a service pipe), paragraph (b) (maximum expenses recoverable) and the “but” preceding it are repealed.
- (5) In section 47 (conditions of connection with water main)—
  - (a) in subsection (2)(a) (requirement to give security for amounts to be paid), for the words from “such security” to “reasonably require” there is substituted “such security as charging rules allow and the undertaker requires”;
  - (b) in subsection (3B) (reference of disputes to Authority), in the opening words, “whether” is repealed;
  - (c) in subsection (3B), for paragraph (a) there is substituted—
    - “(a) the security required to be provided by a condition imposed under subsection (2)(a),”;
  - (d) in subsection (3B)(b), at the beginning there is inserted “whether”;
  - (e) in subsection (3B)(c), after “particular case,” there is inserted “whether”.

## **19 Charges for providing a public sewer etc**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 99 (financial conditions for compliance with the duty in section 98 to provide a public sewer or lateral drain)—
  - (a) in subsection (1)(b) (condition as to providing security), for the words from “such security” to “reasonably required” there is substituted “such security as charging rules allow and the undertaker may have required”;
  - (b) in subsection (2) (undertaking to pay in respect of public sewer), for paragraph (a) there is substituted—
    - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
  - (c) in subsection (2A) (undertaking to pay in respect of lateral drain), for paragraph (a) there is substituted—
    - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
  - (d) subsections (4) and (5) (interest on sums deposited by way of security) are repealed;
  - (e) in subsection (6) (reference of disputes to the Water Services Regulation Authority), in paragraph (b), after “the amount” there is inserted “or amounts by way of charges”.
- (3) In section 101B (power to provide lateral drain following provision of public sewer)—
  - (a) in subsection (3) (obligation to pay for drain requested), for “the costs reasonably incurred in or in connection with providing that drain” there is substituted “such charges as the undertaker may impose in accordance with charging rules”;
  - (b) after subsection (3) there is inserted—
    - “(3A) The sewerage undertaker may require the person making a request under this section to provide such security for the payment of the charges as charging rules allow.”;

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- (c) in subsection (4) (reference of disputes to Authority), for paragraph (b) there is substituted—
    - “(b) the amount of any charge imposed.”;
  - (d) in subsection (4), after paragraph (b) there is inserted “or
    - (c) the security required to be provided.”.
- (4) In section 107 (right of a sewerage undertaker to undertake the making of a communication with a public sewer)—
- (a) in subsection (3)(b)(i) (no obligation for undertaker to act until paid an estimated cost of the work in advance), for “the cost of the work” there is substituted “the amount by way of charges that the undertaker may impose in accordance with charging rules for making the connection”;
  - (b) in subsection (3)(b)(ii) (no obligation for undertaker to act until given security for payment), for “such security” to the end there is substituted “such security for the payment of that amount as charging rules allow and it may have required.”;
  - (c) for subsection (4), there is substituted—
    - “(4) If a payment to a sewerage undertaker under subsection (3) exceeds the charges that may, in the event, be imposed in accordance with charging rules for making the connection in question, the excess is to be repaid by the undertaker; and, if and so far as those charges are not covered by a payment under subsection (3), those charges are to be paid by the person for whom the work was undertaken.”;
  - (d) in subsection (4A) (reference to disputes to Authority), in paragraph (a), for “of the cost of works” there is substituted “of the amount of charges”;
  - (e) in subsection (4A), for paragraph (b) (and the “or” following it) there is substituted—
    - “(b) the security required by the undertaker, or”;
  - (f) in subsection (4A), for paragraph (c) there is substituted—
    - “(c) whether any excess is repayable, or any charges are payable, under subsection (4), or the amount of any such excess or charges.”.
- (5) In section 146 (connection charges etc, and charges for highway drainage), in subsection (5)(a), after “expenses incurred by it in” there is inserted “, or charges imposed by it for,”.

## **20 Charges for moving pipes**

In section 185 of the Water Industry Act 1991 (duty to move pipes etc in certain cases), in subsection (5) (recovery of undertaker’s expenses), for the words from “the undertaker” to the end there is substituted “the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules”.

### *Sustainable drainage*

## **21 Drainage systems relieving public sewers**

- (1) After section 114 of the Water Industry Act 1991 there is inserted—

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*“Sustainable drainage*

**114A Drainage systems relieving public sewers**

- (1) Sewerage undertakers may construct, on their own or on another’s land, drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.
- (2) A sewerage undertaker may maintain and operate a drainage system constructed by it under subsection (1).
- (3) In this section—
  - “drainage system” means a structure designed to receive rainwater and other surface water, other than a natural watercourse;
  - “natural watercourse” means a river or stream;
  - “rainwater” includes snow and other precipitation;
  - “structure” includes—
    - (a) any part of an existing or proposed structure, and
    - (b) any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or other surface water.
- (4) The powers conferred by subsections (1) and (2) are not to be regarded as functions of a sewerage undertaker for the purposes of section 155 (compulsory purchase of land required for the purposes of carrying out functions of relevant undertakers).”
- (2) In section 158 of that Act (powers to lay pipes in streets), in subsection (7) (meaning of reference to a relevant pipe), in paragraph (b)—
  - (a) omit the “or” at the end of both sub-paragraphs (i) and (ii);
  - (b) after sub-paragraph (iii) there is inserted “or
    - (iv) any pipe forming part of, or required in connection with, a drainage system constructed under section 114A.”
- (3) In Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage), after paragraph 19 there is inserted—

*“Exception 3: systems under section 114A Water Industry Act 1991*

- 19A      The adoption duty does not apply to a drainage system constructed under section 114A of the Water Industry Act 1991 (drainage systems relieving public sewers).”

## CHAPTER 3

### REGULATION OF THE WATER INDUSTRY

#### *General duties of the Water Services Regulation Authority*

#### **22 Primary duty to secure resilience**

(1) Section 2 of the Water Industry Act 1991 (general duties with respect to water industry) is amended as follows.

(2) In subsection (2A)—

- (a) omit the “and” at the end of paragraph (c);
- (b) after paragraph (d) insert “; and
- (e) to further the resilience objective.”

(3) After subsection (2D) insert—

“(2DA) The resilience objective mentioned in subsection (2A)(e) is—

- (a) to secure the long-term resilience of water undertakers’ supply systems and sewerage undertakers’ sewerage systems as regards environmental pressures, population growth and changes in consumer behaviour, and
- (b) to secure that undertakers take steps for the purpose of enabling them to meet, in the long term, the need for the supply of water and the provision of sewerage services to consumers,

including by promoting—

- (i) appropriate long-term planning and investment by relevant undertakers, and
- (ii) the taking by them of a range of measures to manage water resources in sustainable ways, and to increase efficiency in the use of water and reduce demand for water so as to reduce pressure on water resources.

(2DB) For the purposes of subsection (2DA)—

- (a) the reference to water undertakers’ supply systems is to be construed in accordance with section 17B;
- (b) the reference to sewerage undertakers’ sewerage systems is a reference to the systems comprising—
  - (i) the systems of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that undertakers are required to provide by section 94, and
  - (ii) the lateral drains that undertakers are required to maintain by section 94.”

#### **23 General duty as regards undue preference in the provision of services**

In section 2 of the Water Industry Act 1991 (general duties of the Secretary of State and the Water Services Regulation Authority with respect to the water industry),

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in subsection (3) (general considerations in exercising powers and duties), after paragraph (b) there is inserted—

- “(ba) to secure that no undue preference (including for itself) is shown, and that there is no undue discrimination, in the doing by such a company of—
- (i) such things as relate to the provision of services by itself or another such company, or
  - (ii) such things as relate to the provision of services by a water supply licensee or a sewerage licensee;”.

## 24 Strategic priorities and objectives

(1) For section 2A of the Water Industry Act 1991 there is substituted—

### “2A Strategic priorities and objectives: England

- (1) The Secretary of State may from time to time publish a statement setting out strategic priorities and objectives for the Authority in carrying out relevant functions relating wholly or mainly to England.
- (2) The Authority must carry out those functions in accordance with any statement published under this section.
- (3) In formulating a statement under this section, the Secretary of State—
  - (a) must have regard to the duties imposed on the Authority under section 2,
  - (b) must have regard to social and environmental matters, and
  - (c) may have regard to such other matters as the Secretary of State thinks fit.
- (4) Before publishing a statement under this section, the Secretary of State must consult—
  - (a) the Authority,
  - (b) the Council,
  - (c) relevant undertakers,
  - (d) licensed water suppliers,
  - (e) the Environment Agency,
  - (f) the Welsh Ministers,
  - (g) the NRBW, and
  - (h) anyone else the Secretary of State thinks appropriate.
- (5) Before publishing a statement under this section the Secretary of State must—
  - (a) lay a draft of the statement before Parliament, and
  - (b) then wait until the end of the 40-day period.
- (6) The Secretary of State may not publish the statement under this section if, within the 40-day period, either House of Parliament resolves not to approve it.
- (7) “The 40-day period” means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).

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- (8) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (9) In this section “relevant functions relating wholly or mainly to England” means the functions mentioned in section 2(1)(b) so far as they relate to appointment areas wholly or mainly in England.
- (10) In subsection (9) “appointment area” means an area for which an appointment is held under Chapter 1 of Part 2.

## **2B Strategic priorities and objectives: Wales**

- (1) The Welsh Ministers may from time to time publish a statement setting out strategic priorities and objectives for the Authority in carrying out relevant functions relating wholly or mainly to Wales.
- (2) The Authority must carry out those functions in accordance with any statement published under this section.
- (3) In formulating a statement under this section the Welsh Ministers—
  - (a) must have regard to the duties imposed on the Authority under section 2,
  - (b) must have regard to social and environmental matters, and
  - (c) may have regard to such other matters as the Welsh Ministers think fit.
- (4) Before publishing a statement under this section, the Welsh Ministers must consult—
  - (a) the Authority,
  - (b) the Council,
  - (c) relevant undertakers,
  - (d) licensed water suppliers,
  - (e) the NRBW,
  - (f) the Secretary of State,
  - (g) the Environment Agency, and
  - (h) anyone else the Welsh Ministers think appropriate.
- (5) Before publishing a statement under this section the Welsh Ministers must—
  - (a) lay a draft of the statement before the Assembly, and
  - (b) then wait until the end of the 40-day period.
- (6) The Welsh Ministers may not publish the statement under this section if, within the 40-day period, the Assembly resolves not to approve it.
- (7) “The 40-day period” means the period of 40 days beginning with the day on which the draft is laid before the Assembly.
- (8) When calculating the 40-day period, ignore any period during which the Assembly is dissolved or is in recess for more than 4 days.
- (9) In this section “relevant functions relating wholly or mainly to Wales” means the functions mentioned in section 2(1)(b) so far as they relate to appointment areas wholly or mainly in Wales.

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- (10) In subsection (9) “appointment area” means an area for which an appointment is held under Chapter 1 of Part 2.”
- (2) In section 2(6A), (6B) and (7) of that Act (general duties with respect to water industry), for “section 2A” there is substituted “sections 2A and 2B”.
- (3) In section 192A of that Act (forward work programme), after subsection (3) there is inserted—
- “(3A) The forward work programme for any year must also include an explanation of how the projects described in it reflect any strategic priorities or objectives published under section 2A or 2B.”

*Regulation of relevant undertakers, water supply licensees and sewerage licensees*

**25 Procedure for granting water supply and sewerage licences**

- (1) Section 17F of the Water Industry Act 1991 (procedure for granting water supply licences) is amended as follows.
- (2) For subsection (1) (application to be made as set out in regulations) there is substituted—
- “(1) The Authority must determine for each type of relevant application that may be made—
- (a) the form and manner in which an application is to be made;
  - (b) the information it is to contain;
  - (c) the documents that are to accompany it;
  - (d) the fee that is to accompany it.
- (1A) The fees may be different in different circumstances.
- (1B) The Authority may make a new determination as to a matter referred to in subsection (1).
- (1C) The Authority must publish a notice of what it has determined under subsection (1) or (1B) in such manner as it thinks appropriate for bringing the determination to the attention of those affected by the determination.
- (1D) For the purposes of subsection (1) a relevant application is an application for—
- (a) the grant of a water supply or sewerage licence giving a particular authorisation or combination of authorisations;
  - (b) the variation of a water supply or sewerage licence so that it gives—
    - (i) a particular authorisation only, or
    - (ii) a particular combination of authorisations.
- (1E) A person making a relevant application must comply with such provisions of a notice published under subsection (1C) as relate to the application.”
- (3) Subsections (2), (3) and (5) (requirement for applicant to publish notice of an application made) are repealed.

- (4) In subsection (4) (procedure where the Secretary of State or the Authority proposes to refuse an application), for “the application”, in the first place it occurs, there is substituted “a relevant application”.

## **26 Extension of time limit for imposing financial penalties**

- (1) In section 22C of the Water Industry Act 1991 (time limits on the imposition of financial penalties), in subsection (1), for “twelve months” there is substituted “five years”.
- (2) But subsection (1) does not apply in relation to a contravention or failure which—
- (a) occurred before the date on which this section comes into force, and
  - (b) is not continuing on that date.

## **27 Water resources management plans for England: resilience**

- (1) Chapter 1 of Part 3 of the Water Industry Act 1991 (water supply) is amended as follows.
- (2) In section 37A(3) (water resources management plans: preparation and review), at the end insert—
- “(and see also section 37AA).”
- (3) After that section insert—

### **“37AA Water resources management plans for England: resilience**

- (1) The Secretary of State may give a direction about the basis on which a water resources management plan for England is to be prepared.
- (2) A direction under this section may be given only where the Secretary of State considers it appropriate to do so with a view to securing that a water undertaker is able to meet the need for the supply of water to consumers in particular circumstances.
- (3) A direction under this section may, in particular, require a plan to be prepared on the basis of a specified assumption, including—
- (a) an assumption as to whether, and how often, specified circumstances are likely to arise;
  - (b) an assumption that a specified power would or would not be exercised by the water undertaker or another person in specified circumstances.
- (4) Before giving a direction under this section, the Secretary of State must consult—
- (a) the Authority,
  - (b) the Welsh Ministers,
  - (c) each water undertaker to which the direction would apply,
  - (d) the Environment Agency,
  - (e) the NRBW, and
  - (f) such other persons as the Secretary of State considers appropriate.
- (5) In this section—

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“specified” means specified in a direction under this section;

“water resources management plan for England” means a water resources management plan prepared by a water undertaker whose area is wholly or mainly in England.”

- (4) In section 37D(1) (water resources management plans: directions), after “37A” insert “, 37AA”.

## **28 Frequency of water resources management and drought plans**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 37A (water resources management plans: preparation and review)—
- (a) in subsection (1), after “prepare” there is inserted “, publish”;
  - (b) in subsection (4), after “preparing” there is inserted “and publishing”;
  - (c) in subsection (6), in the opening words, after “prepare” there is inserted “and publish”.
- (3) In section 37D (water resources management plans: supplementary), after subsection (3) there is inserted—
- “(4) The Minister may by order made by statutory instrument amend the period for the time being specified in section 37A(6)(c).
- (5) In subsection (4), “the Minister” means—
- (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.
- (6) A statutory instrument containing an order made by the Secretary of State under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A statutory instrument containing an order made by the Welsh Ministers under subsection (4) is subject to annulment in pursuance of a resolution of the Assembly.
- (8) Subsection (9) applies in relation to a statutory instrument containing both—
- (a) an order made by the Secretary of State under subsection (4), and
  - (b) an order made by the Welsh Ministers under subsection (4).
- (9) If in accordance with subsection (6) or (7) (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
  - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
- the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.”
- (4) In section 39B (drought plans: preparation and review)—
- (a) in subsection (1), after “prepare” there is inserted “, publish”;
  - (b) in subsection (6)—

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- (i) in the opening words, after “prepare” there is inserted “and publish”;
- (ii) in paragraph (c) (long-stop date) for “three years” there is substituted “five years”.

(5) After section 39C (drought plans: provision of information) there is inserted—

**“39D Drought plans: supplementary**

- (1) The Minister may by order made by statutory instrument amend the period for the time being specified in section 39B(6)(c).
- (2) In subsection (1), “the Minister” means—
  - (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.
- (3) A statutory instrument containing an order made by the Secretary of State under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing an order made by the Welsh Ministers under subsection (1) is subject to annulment in pursuance of a resolution of the Assembly.
- (5) Subsection (6) applies in relation to a statutory instrument containing both—
  - (a) an order made by the Secretary of State under subsection (1), and
  - (b) an order made by the Welsh Ministers under subsection (1).
- (6) If in accordance with subsection (3) or (4) (negative resolution procedure)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
  - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.”

**29 Standards of performance: water supply**

(1) After section 38 of the Water Industry Act 1991 there is inserted—

**“38ZA Standards of performance in connection with the supply of water: water supply licensees**

- (1) For the purpose of establishing overall standards of performance in connection with the supply of water by water supply licensees in accordance with their retail authorisations or restricted retail authorisations, the Minister may, in accordance with section 39ZA, by regulations—
  - (a) impose requirements in connection with such supplies of water;
  - (b) provide for a requirement so imposed to be enforceable under section 18 by—

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- (i) the Minister, or
  - (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (2) The Minister may, in accordance with section 39ZA, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in the Minister’s opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) may provide that if a water supply licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who—
- (a) is affected by the failure, and
  - (b) is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may—
- (a) include in a standard of performance a requirement for a water supply licensee, in prescribed circumstances, to inform a person of that person’s rights by virtue of any such regulations;
  - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority’s determination on such a reference to be enforceable in such manner as may be prescribed;
  - (d) prescribe circumstances in which a water supply licensee is to be exempted from requirements of the regulations.
- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.
- (6) In this section—
- “the Minister” means—
  - (a) the Secretary of State, in relation to supplies of water made in accordance with a retail authorisation;
  - (b) the Welsh Ministers, in relation to supplies of water made in accordance with a restricted retail authorisation;
- “prescribed” means prescribed by regulations made by the Minister.”
- (2) Section 38A of that Act (information as to levels of performance of water undertakers) is amended in accordance with subsections (3) to (6).
- (3) In subsection (1) (duty of Water Services Regulation Authority to collect information) —
- (a) the “and” following paragraph (a) is repealed;
  - (b) after paragraph (a) there is inserted—
    - “(aa) the compensation paid by water supply licensees under regulations under section 38ZA(2); and”;
  - (c) in paragraph (b), after “water undertakers” there is inserted “or water supply licensees”.

- (4) After subsection (2) there is inserted—
- “(2A) At such times as the Authority may direct, each water supply licensee is to give the following information to the Authority—
- (a) as respects each standard established by regulations under section 38ZA(1), such information with respect to the level of performance achieved by the licensee as may be specified in the direction;
  - (b) as respects each standard prescribed by regulations under section 38ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.”
- (5) For subsection (3) (offence of failing to comply with subsection (2)) there is substituted—
- “(3) The requirements in subsections (2) and (2A) are enforceable by the Authority under section 18.”
- (6) In subsection (4) (publication of information collected), after “water undertakers” there is inserted “or water supply licensees”.
- (7) After section 39 there is inserted—

**“39ZA Procedure for regulations under section 38ZA**

- (1) Section 39 applies for the purposes of making regulations under section 38ZA as it applies for the purposes of making regulations under section 38.
- (2) In the application of section 39 by virtue of subsection (1)—
  - (a) a reference to a water undertaker is to be treated as a reference to a water supply licensee, and
  - (b) a reference to the Secretary of State is to be treated as a reference to the Minister (as defined in section 38ZA(6)).
- (3) Regulations under section 38ZA are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under section 38ZA is subject to annulment in pursuance of a resolution of—
  - (a) either House of Parliament, in the case of regulations made by the Secretary of State;
  - (b) the Assembly, in the case of regulations made by the Welsh Ministers.
- (5) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 38ZA as it applies to regulations made by the Secretary of State.”

**30 Standards of performance: sewerage**

- (1) After section 95 of the Water Industry Act 1991 there is inserted—

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**“95ZA Standards of performance in connection with provision of sewerage services: sewerage licensees**

- (1) For the purpose of establishing overall standards of performance in connection with the provision of sewerage services by sewerage licensees in accordance with their retail authorisations, the Secretary of State may, in accordance with section 96ZA, by regulations—
    - (a) impose requirements in connection with the provision of sewerage services;
    - (b) provide for a requirement so imposed to be enforceable under section 18 by—
      - (i) the Secretary of State, or
      - (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
  - (2) The Secretary of State may, in accordance with section 96ZA, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in the Secretary of State’s opinion, ought to be achieved in individual cases.
  - (3) Regulations under subsection (2) may provide that if a sewerage licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who—
    - (a) is affected by the failure, and
    - (b) is of a prescribed description.
  - (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may—
    - (a) include in a standard of performance a requirement for a sewerage licensee, in prescribed circumstances, to inform a person of that person’s rights by virtue of any such regulations;
    - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
    - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority’s determination on such a reference to be enforceable in such manner as may be prescribed;
    - (d) prescribe circumstances in which a sewerage licensee is to be exempted from requirements of the regulations.
  - (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.”
- (2) Section 95A of that Act (information as to levels of performance of sewerage undertakers) is amended in accordance with subsections (3) to (6).
  - (3) In subsection (1) (duty of Water Services Regulation Authority to collect information)
    - (a) the “and” following paragraph (a) is repealed;
    - (b) after paragraph (a) there is inserted—

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- “(aa) the compensation paid by sewerage licensees under regulations under section 95ZA(2); and”;
- (c) in paragraph (b), after “sewerage undertakers” there is inserted “or sewerage licensees”.
- (4) After subsection (2) there is inserted—
- “(2A) At such times as the Authority may direct, each sewerage licensee is to give the following information to the Authority—
- (a) as respects each standard established by regulations under section 95ZA(1), such information with respect to the level of performance achieved by the licensee as may be specified in the direction;
- (b) as respects each standard prescribed by regulations under section 95ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.”
- (5) For subsection (3) (offence of failing to comply with subsection (2)) there is substituted—
- “(3) The requirements in subsections (2) and (2A) are enforceable by the Authority under section 18.”
- (6) In subsection (4) (publication of information collected), after “sewerage undertakers” there is inserted “or sewerage licensees”.
- (7) After section 96 there is inserted—

**“96ZA Procedure for regulations under section 95ZA**

- (1) Section 96 applies for the purposes of making regulations under section 95ZA as it applies for the purposes of making regulations under section 95.
- (2) In the application of section 96 by virtue of subsection (1), a reference to a sewerage undertaker is to be treated as a reference to a sewerage licensee.”

**31 Interim duty: water supply**

For section 63AC of the Water Industry Act 1991 (interim duty of water undertaker: domestic and non-domestic supply) there is substituted—

**“63AC Interim duty: domestic and non-domestic supply**

- (1) This section applies where—
- (a) a water supply licensee (“the previous licensee”) ceases to supply any premises with water, and
- (b) the owner or occupier of the premises has not notified the water undertaker in whose area the premises are that—
- (i) he has made arrangements for the continuation of the supply of water to the premises, or
- (ii) he intends any supply of water to the premises to cease.
- (2) It is to be the duty of the water undertaker to continue the supply of water to the premises which was made by the previous licensee.

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- (3) But the Authority may give a direction to an eligible water supply licensee (an “interim licensee”) providing that it is to be the duty of that licensee to continue the supply instead.
- (4) An “eligible water supply licensee” is a water supply licensee with a retail authorisation or a restricted retail authorisation who has elected to be an eligible water supply licensee for the purposes of this section in accordance with the code issued under section 63AF.
- (5) If the Authority proposes to give a direction under subsection (3) to an eligible water supply licensee—
  - (a) the Authority must give notice of the proposed direction to the licensee, and
  - (b) the licensee may, in accordance with the code issued under section 63AF, temporarily suspend the election made by the licensee as mentioned in subsection (4), so that the proposed direction cannot be given to the licensee.
- (6) Where a supply is made by an undertaker under subsection (2)—
  - (a) the charges payable in respect of the supply are to be fixed from time to time by a charges scheme under section 143, and
  - (b) subject to subsection (12), the supply is to be made until—
    - (i) a supply is made by an interim licensee by virtue of a direction under subsection (3),
    - (ii) a supply is made by a water supply licensee following the service of a notice under section 63AA or 63AB;
    - (iii) a supply is made under section 52 or 55, or
    - (iv) a notice is served by the undertaker on the owner or occupier of the premises stating that the supply is to be discontinued (subject to subsection (8)),whichever is the earlier.
- (7) Where a supply is made by an interim licensee by virtue of a direction given under subsection (3)—
  - (a) the supply by the interim licensee is to be treated as having begun on the date on which the previous licensee ceased to supply the premises,
  - (b) the terms and conditions in accordance with which the supply is to be made are to be—
    - (i) those provided for by a scheme made under section 63AE, or
    - (ii) such other terms and conditions as may be agreed between the interim licensee and the owner or occupier of the premises, and
  - (c) subject to subsection (12), the supply is to be made until it is discontinued in accordance with the terms and conditions mentioned in paragraph (b).
- (8) A notice under subsection (6)(b)(iv) may not be served before the end of the period of three months beginning with the day on which the supply by the previous licensee ceased.
- (9) Subsections (10) and (11) apply if, within a period of three months beginning with the date on which the previous licensee ceased to supply the premises with water, the owner or occupier of the premises serves notice—

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- (a) under section 63AA or 63AB, on the water undertaker continuing the supply under subsection (2), or
- (b) in accordance with the terms and conditions mentioned in subsection (7)(b), on the interim licensee continuing the supply by virtue of a direction given under subsection (3),

that instead another water supply licensee (“the new licensee”) is to continue the supply of water to the premises which was made by the previous licensee.

- (10) The notice must—
  - (a) specify the time from which the new licensee is to continue the supply in question, and
  - (b) be served in accordance with the code issued under section 63AF.
- (11) In the case of a notice served as mentioned in subsection (9)(a), the supply by the new licensee is to be treated as having begun on the date on which the previous licensee ceased to supply the premises.
- (12) Supplies of water under this section are subject to sections 60 to 63.

#### **63AD Interim duty: supplementary**

- (1) A water undertaker is not required by virtue of section 63AC to provide a supply of water to any premises if the provision of the supply 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).
- (2) The Authority may determine, in a case referred to it by the owner or occupier of the premises in question, whether the condition in subsection (1) is satisfied in relation to a water undertaker.
- (3) Before the Authority determines whether that condition is satisfied, it must consult—
  - (a) the Secretary of State, in the case of a water undertaker whose area is wholly or mainly in England;
  - (b) the Welsh Ministers, in the case of a water undertaker whose area is wholly or mainly in Wales.
- (4) The supply of water to any premises by a water undertaker under section 63AC does not prevent a proposed supply to those premises by that undertaker under section 55 from being regarded as a new supply for the purposes of that section.
- (5) Where a duty is imposed by section 63AC(2), or by virtue of a direction given under section 63AC(3), in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage is actionable at the suit of that owner or occupier.
- (6) But in any proceedings brought against a water undertaker or water supply licensee in pursuance of subsection (5), it is a defence for the undertaker or

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licensee to show that the undertaker or, as the case may be, the licensee took all reasonable steps and exercised all due diligence to avoid the breach.

- (7) For the purposes of section 63AC, premises which are outside a water undertaker's area are to be treated as being within that area if they are supplied with water using the undertaker's supply system.
- (8) In subsection (7), the reference to the undertaker's supply system is to be construed in accordance with section 17B.

### **63AE Interim licensees: schemes for terms and conditions**

- (1) A person who is an eligible water supply licensee for the purposes of section 63AC must make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to a supply of water made by the licensee by virtue of a direction given under section 63AC(3).
- (2) A scheme under this section may make different provision for different purposes, or for different areas.
- (3) As soon as practicable after a water supply licensee makes or revises a scheme under this section the licensee is to—
  - (a) publish the scheme, or revised scheme, on the licensee's website, and
  - (b) send a copy of the scheme, or revised scheme, to the Authority.
- (4) The Authority may give a direction that terms and conditions applying to a supply of water in accordance with a scheme under this section must be modified as specified in the direction.
- (5) A direction under subsection (4) may apply—
  - (a) generally to terms and conditions applying in accordance with a scheme under this section, or
  - (b) to terms and conditions so applying in any particular case.
- (6) It is the duty of a water supply licensee to comply with a direction under subsection (4), and this duty is enforceable under section 18.

### **63AF Interim duty: code**

- (1) The Authority must issue a code in relation to—
  - (a) supplies of water under section 63AC, and
  - (b) its power of direction under section 63AC(3) (power to direct that eligible water supply licensee makes interim supply).
- (2) The code may, in particular, make provision about—
  - (a) the procedure for electing to be an eligible water supply licensee for the purposes of section 63AC;
  - (b) the procedure for temporarily suspending such an election under section 63AC(5)(b);
  - (c) the circumstances in which the Authority's power of direction under section 63AC(3) or 63AE(4) may or may not be exercised;

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- (d) how the Authority will determine the date on which a water supply licensee ceased to supply premises with water for the purposes of section 63AC;
  - (e) terms and conditions contained in schemes made under section 63AE;
  - (f) eligible water supply licensees informing owners or occupiers of premises of their schemes for terms and conditions made under section 63AE, before agreeing any terms and conditions as mentioned in section 63AC(7)(b)(ii);
  - (g) the giving of notices as mentioned in section 63AC(9) (that a new licensee is to continue the supply of water made by the previous licensee) including, in particular, provision about—
    - (i) the earliest time that a notice may specify as the time from which a new licensee is to continue the supply of water made by a previous licensee;
    - (ii) the procedure for serving a notice.
- (3) If the Authority considers that a water supply licensee is not acting as required by provision contained in the code as mentioned in subsection (2)(e) or (f), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a water supply licensee to comply with a direction under subsection (3), and this duty is enforceable under section 18.
- (5) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (6) References in section 63AC to the code issued under this section are to the code issued under this section that has effect at the time in question.”

## **32 Interim duty: sewerage services**

After section 110J of the Water Industry Act 1991 (as inserted by section 9) there is inserted—

*“Provision of sewerage services by sewerage licensees etc*

### **110K Provision by sewerage licensee**

- (1) The owner or occupier of any premises may serve a notice on a sewerage undertaker—
  - (a) informing the undertaker that sewerage services to the premises are to be provided by a sewerage licensee, and
  - (b) specifying the time after which the undertaker will no longer be required to provide sewerage services to the premises.
- (2) Where the charges for the sewerage services provided by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice is to fall at least two working days after the notice is served.
- (3) In this section a reference to two working days is a reference to a period of 48 hours calculated after disregarding any time falling on—

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- (a) a Saturday or Sunday, or
- (b) Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

### **110L Interim duty: sewerage undertakers and sewerage licensees**

- (1) This section applies where—
  - (a) a sewerage licensee (“the previous licensee”) ceases to provide sewerage services to any premises, and
  - (b) the owner or occupier of the premises has not notified the sewerage undertaker in whose area the premises are that—
    - (i) he has made arrangements for the continuation of the provision of sewerage services to the premises, or
    - (ii) he intends any provision of sewerage services to the premises to cease.
- (2) It is to be the duty of the sewerage undertaker to continue to provide the sewerage services to the premises which were provided by the previous licensee.
- (3) But the Authority may give a direction to an eligible sewerage licensee (an “interim licensee”) providing that it is to be the duty of that licensee to provide the sewerage services instead.
- (4) An “eligible sewerage licensee” is a sewerage licensee with a retail authorisation who has elected to be an eligible sewerage licensee for the purposes of this section in accordance with the code issued under section 110O.
- (5) If the Authority proposes to give a direction under subsection (3) to an eligible sewerage licensee—
  - (a) the Authority must give notice of the proposed direction to the licensee, and
  - (b) the licensee may, in accordance with the code issued under section 110O, temporarily suspend the election made by the licensee as mentioned in subsection (4), so that the proposed direction cannot be given to the licensee.
- (6) Where sewerage services are provided by an undertaker under subsection (2)—
  - (a) the charges payable in respect of the provision of the services are to be fixed from time to time by a charges scheme under section 143, and
  - (b) the services are to be provided until—
    - (i) services are provided by an interim licensee by virtue of a direction under subsection (3),
    - (ii) services are provided by a sewerage licensee following the service of a notice under section 110K, or
    - (iii) services are provided to the premises by another sewerage undertaker following the service of a notice by the owner or occupier of the premises on the undertaker providing services under subsection (2) specifying the time after which the undertaker will no longer be required to provide sewerage services to the premises (see section 110M(5)),

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whichever is the earlier.

- (7) Where sewerage services are provided by an interim licensee by virtue of a direction given under subsection (3)—
- (a) the provision of services by the interim licensee is to be treated as having begun on the date on which the previous licensee ceased to provide services to the premises,
  - (b) the terms and conditions in accordance with which the services are to be provided are to be—
    - (i) those provided for by a scheme made under section 110N, or
    - (ii) such other terms and conditions as may be agreed between the interim licensee and the owner or occupier of the premises, and
  - (c) the services are to be provided until they are discontinued in accordance with the terms and conditions mentioned in paragraph (b).
- (8) Subsections (9) and (10) apply if, within a period of three months beginning with the date on which the previous licensee ceased to provide sewerage services to the premises, the owner or occupier of the premises serves notice—
- (a) under section 110K, on the sewerage undertaker continuing the provision of services under subsection (2), or
  - (b) in accordance with the terms and conditions mentioned in subsection (7)(b), on the interim licensee continuing the provision of services by virtue of a direction given under subsection (3),
- that instead another sewerage licensee (“the new licensee”) is to continue the provision of the services to the premises which were provided by the previous licensee.
- (9) The notice must—
- (a) specify the time from which the new licensee is to continue the provision of the services in question, and
  - (b) be served in accordance with the code issued under section 110O.
- (10) In the case of a notice served as mentioned in subsection (8)(a), the provision of services by the new licensee is to be treated as having begun on the date on which the previous licensee ceased to provide services to the premises.

### **110M Interim duty: supplementary**

- (1) Where a duty is imposed by section 110L(2), or by virtue of a direction given under section 110L(3), in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage is actionable at the suit of that owner or occupier.
- (2) But in any proceedings brought against a sewerage undertaker or sewerage licensee in pursuance of subsection (1), it is a defence for the undertaker or licensee to show that the undertaker or, as the case may be, the licensee took all reasonable steps and exercised all due diligence to avoid the breach.
- (3) For the purposes of section 110L, premises which are outside a sewerage undertaker’s area are to be treated as being within that area if they are provided with sewerage services using the undertaker’s sewerage system.

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- (4) In subsection (3), the reference to the undertaker’s sewerage system is to be construed in accordance with section 17BA(7).
- (5) Section 110K(2) and (3) apply to a notice served under section 110L(6)(b)(iii) as they apply to a notice served under section 110K.

#### **110N Interim licensees: schemes for terms and conditions**

- (1) A person who is an eligible sewerage licensee for the purposes of section 110L must make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to the provision of sewerage services by the licensee by virtue of a direction given under section 110L(3).
- (2) A scheme under this section may make different provision for different purposes, or for different areas.
- (3) As soon as practicable after a sewerage licensee makes or revises a scheme under this section the licensee is to—
  - (a) publish the scheme, or revised scheme, on the licensee’s website, and
  - (b) send a copy of the scheme, or revised scheme, to the Authority.
- (4) The Authority may give a direction that terms and conditions applying to the provision of sewerage services in accordance with a scheme under this section must be modified as specified in the direction.
- (5) A direction under subsection (4) may apply—
  - (a) generally to terms and conditions applying in accordance with a scheme under this section, or
  - (b) to terms and conditions so applying in any particular case.
- (6) It is the duty of a sewerage licensee to comply with a direction under subsection (4), and this duty is enforceable under section 18.

#### **110O Interim duty: code**

- (1) The Authority must issue a code in relation to—
  - (a) the provision of sewerage services under section 110L, and
  - (b) its power of direction under section 110L(3) (power to direct that eligible sewerage licensee provides interim sewerage services).
- (2) The code may, in particular, make provision about—
  - (a) the procedure for electing to be an eligible sewerage licensee for the purposes of section 110L;
  - (b) the procedure for temporarily suspending such an election under section 110L(5)(b);
  - (c) the circumstances in which the Authority’s power of direction under section 110L(3) or 110N(4) may or may not be exercised;
  - (d) how the Authority will determine the date on which a sewerage licensee ceased to provide sewerage services to premises for the purposes of section 110L;
  - (e) terms and conditions contained in schemes made under section 110N;

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- (f) eligible sewerage licensees informing owners or occupiers of premises of their schemes for terms and conditions made under section 110N, before agreeing any terms and conditions as mentioned in section 110L(7)(b)(ii);
  - (g) the giving of notices as mentioned in section 110L(8) (that a new licensee is to continue the provision of the sewerage services provided by the previous licensee) including, in particular, provision about—
    - (i) the earliest time that a notice may specify as the time from which a new licensee is to continue the provision of the sewerage services provided by a previous licensee;
    - (ii) the procedure for serving a notice.
- (3) If the Authority considers that a sewerage licensee is not acting as required by provision contained in the code as mentioned in subsection (2)(e) or (f), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a sewerage licensee to comply with a direction under subsection (3), and this duty is enforceable under section 18.
- (5) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (6) References in section 110L to the code issued under this section are to the code issued under this section that has effect at the time in question.”

### **33 Notice of agreements within section 142(2)(b)**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 142 (powers of undertakers to charge), after subsection (6) there is inserted—
- “(6A) If an undertaker makes an agreement that falls within subsection (2)(b), it must notify the Authority of the provisions of the agreement.
- (6B) The requirement in subsection (6A) is enforceable by the Authority under section 18.”
- (3) In section 195 (the Water Services Regulation Authority’s register relating to relevant undertakers and licensees)—
- (a) in subsection (3) (power to direct that provisions of an undertaker’s appointment etc are not entered in the register), after “any provision” there is inserted “or, in the case of information that falls to be entered under subsection (3B), any information”;
  - (b) in subsection (3), after “that provision” there is inserted “or that information”;
  - (c) after subsection (3A) there is inserted—
- “(3B) Subject to any direction given under subsection (3), the Authority must cause to be entered on the register such information about an agreement falling within section 142(2)(b) as the Authority thinks fit.
- (3C) Subsection (3B) has effect in relation to agreements made after the coming into force of section 33 of the Water Act 2014.”

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### **34 Register relating to undertakers and licensees**

- (1) Section 195 of the Water Industry Act 1991 (the Water Services Regulation Authority’s register relating to undertakers and licensees) is amended as follows.
- (2) In subsection (1) (register to be maintained in a certain place, in a certain form and for certain purposes), the words from “for the purposes” to the end are repealed.
- (3) After subsection (3C) (inserted by section 33) there is inserted—
  - “(3D) Subject to any direction given under subsection (3), the Authority must cause to be entered on the register the provisions of—
    - (a) a notice under section 40F(3) (reduction in charges payable under a bulk supply agreement);
    - (b) a notice under section 66EA(3) (reduction in charges payable under a section 66D agreement);
    - (c) a notice under section 110G(3) (reduction in charges payable under a main connection agreement);
    - (d) a notice under section 117J(3) (reduction in charges payable under a section 117E agreement).”

### **35 Operation of register**

In section 195 of the Water Industry Act 1991, for subsections (4) to (6) (inspection of the register and fees for certified copies or extracts) there is substituted—

- “(4) The Authority must publish a notice setting out—
  - (a) the times at which the contents of the register are for the time being available for inspection by the public;
  - (b) the fees that must be paid for, or in connection with, an inspection of the contents of the register;
  - (c) the fees that must be paid for, or in connection with, the supply by the Authority of—
    - (i) a copy of the contents of the register, certified by the Authority as being a true copy, or
    - (ii) an extract from the contents of the register, certified by the Authority as being a true extract.
- (4A) The Authority must publish the notice in such manner as the Authority thinks appropriate for bringing it to the attention of the persons who, in the Authority’s opinion, are likely to be affected by it.
- (4B) The Authority must make the contents of the register available for inspection by the public—
  - (a) during such hours, and
  - (b) on payment of such fees,
 as are set out in the notice under subsection (4) that is for the time being in force.”

### **36 Obtaining information for enforcement purposes**

- (1) Section 203 of the Water Industry Act 1991 (power to acquire information for enforcement purposes) is amended as follows.

(2) For subsection (1) there is substituted—

“(1) The Minister or the Authority may serve a notice under subsection (2) in respect of—

- (a) a company that holds an appointment as a relevant undertaker, if of the opinion that Condition 1 is satisfied, or
- (b) a person who holds a licence under Chapter 1A of Part 2, if of the opinion that Condition 2 is satisfied.

(1A) Condition 1 is that the company—

- (a) may be contravening, or may have contravened, a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (b) may be causing or contributing to, or may have caused or contributed to, a contravention by another company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (c) may be causing or contributing to, or may have caused or contributed to, a contravention by a person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,
- (d) has not met the standards prescribed under section 38(2) in connection with the provision of supplies of water, or
- (e) has not met the standards prescribed under section 95(2) in connection with the provision of sewerage services.

(1B) Condition 2 is that the person—

- (a) may be contravening, or may have contravened, a condition of the licence or a statutory or other requirement enforceable under section 18,
- (b) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (c) may be causing or contributing to, or may have caused or contributed to, a contravention by another person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,
- (d) has not met the standards prescribed under section 38ZA(2) in connection with the provision of water supplies, or
- (e) has not met the standards prescribed under section 95ZA(2) in connection with the provision of sewerage services.

(1C) The notice may be served—

- (a) on any person;
- (b) for any purpose connected with powers under Chapter 2 of Part 2.”

(3) In subsections (2) and (6), for “Secretary of State”, in each place where those words occur, there is substituted “Minister”.

(4) In subsection (7), for “or licence” there is substituted “or a person holding such a licence”.

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(5) After subsection (7) there is inserted—

“(8) The Minister” means—

- (a) the Secretary of State, in respect of—
  - (i) any relevant undertaker whose area is wholly or mainly in England;
  - (ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker;
- (b) the Welsh Ministers, in respect of—
  - (i) any relevant undertaker whose area is wholly or mainly in Wales;
  - (ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker.

(9) In this section—

- (a) references to the supply system of a water undertaker are to be construed in accordance with section 17B;
- (b) references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(7).”

*Appeals relating to codes*

**37 Appeals relating to revisions of codes**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) After section 207 there is inserted—

**“PART 7A**

FURTHER PROVISION ABOUT REGULATION

*Appeals relating to revisions of codes*

**207A Appeals to the CMA**

- (1) The Secretary of State may by regulations provide for an appeal to lie to the CMA from—
  - (a) a decision by the Authority to make a revision to a designated code;
  - (b) a decision by the Authority, following consultation under this Act about a proposed revision to a designated code, not to make the proposed revision.
- (2) For the purposes of this section a designated code is a code, or a part of a code, issued by the Authority under or by virtue of this Act that is designated for the purposes of this section by regulations under this section.

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- (3) The regulations may specify descriptions of revisions by reference to which an appeal under the regulations may not be brought.
- (4) Regulations made under subsection (3) may provide—
  - (a) for the exclusion of certain descriptions of revisions to operate only in such cases as may be determined in accordance with the regulations;
  - (b) for a determination in accordance with the regulations to be made—
    - (i) by such persons,
    - (ii) in accordance with such procedures, and
    - (iii) by reference to such matters and the opinions of such persons (including the Authority),as may be provided for in the regulations.
- (5) The regulations may—
  - (a) specify the persons or descriptions of persons eligible to bring an appeal;
  - (b) specify conditions to be satisfied by a person wishing to bring an appeal.
- (6) Regulations made under subsection (5) may—
  - (a) make different provision in relation to different codes or different parts of a code;
  - (b) provide for a representative body or association to bring an appeal.
- (7) The regulations must—
  - (a) provide for appeals to be brought only where the CMA grants permission for an appeal;
  - (b) provide for the grounds on which the CMA may refuse permission.
- (8) Before making regulations under this section the Secretary of State must consult—
  - (a) the Welsh Ministers;
  - (b) the Authority;
  - (c) such other persons as the Secretary of State considers appropriate.

### **207B Procedure on appeals**

- (1) Except where otherwise provided, the functions of the CMA with respect to appeals under section 207A are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- (2) Schedule 16 (provision as to procedure on appeals) has effect.

### **207C Determination of appeals**

- (1) The Secretary of State may by regulations provide for the determination by the CMA of an appeal under section 207A.
- (2) The regulations must require the CMA in determining the appeal to have regard, to the same extent as is required of the Authority, to the matters to

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which the Authority must have regard in exercising or performing the powers and duties mentioned in section 2(1).

- (3) The regulations must provide that the CMA in determining the appeal—
    - (a) may have regard to any matter to which the Authority was not able to have regard in the case of the decision appealed against, but
    - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in that case had it had the opportunity of doing so.
  - (4) The regulations may specify the grounds on which an appeal may be allowed.
  - (5) The grounds specified by the regulations may include the following—
    - (a) that the Authority failed properly to have regard to the matters mentioned in subsection (2);
    - (b) that the Authority failed properly to have regard to the purposes for which the code in question is issued;
    - (c) that the Authority failed to give the appropriate weight to one or more of those matters or purposes.
  - (6) The regulations may make provision for the steps that the CMA is to take—
    - (a) if it allows the appeal;
    - (b) if it does not allow the appeal.
  - (7) Provision under subsection (6)(a) may include remitting a matter to the Authority for reconsideration and redetermination in accordance with directions given by the CMA.
  - (8) The regulations may make provision as to the decision of the CMA on the appeal, including in particular provision for the decision—
    - (a) to be contained in an order made by the CMA;
    - (b) to set out the reasons for the decision;
    - (c) to take effect—
      - (i) at the time specified in the order, or
      - (ii) at the time determined in accordance with provision set out in the order;
    - (d) to be notified to the persons who were parties to the appeal (see paragraph 2 of Schedule 16); and
    - (e) to be published.
  - (9) Provision under subsection (8)(e) may allow the CMA to exclude from publication any information which it is satisfied is—
    - (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
    - (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.”
- (3) In section 213 (powers to make regulations), in subsection (1A) (affirmative resolution procedure to apply on first exercise of power), for “each of sections 89 and 90 above, the instrument” there is substituted “—
- (a) each of sections 89 and 90, and

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- (b) each of sections 207A and 207C and Schedule 16;  
the instrument”.
- (4) After Schedule 15 there is inserted the Schedule set out in Schedule 6 to this Act.

*Guidance relating to rules about charges*

**38 Guidance relating to rules about charges**

In the Water Industry Act 1991, after section 144ZD there is inserted—

*“General guidance on charges*

**144ZE General guidance on charges**

- (1) The Minister must issue guidance about the principles to be applied by the Authority in determining the provisions of—
  - (a) rules under section 66E;
  - (b) rules under section 117I;
  - (c) rules under section 143B.
- (2) The Minister may issue guidance about the principles to be applied by the Authority in determining the provisions of—
  - (a) rules under section 40E;
  - (b) rules under section 51CD;
  - (c) rules issued in accordance with regulations under section 66M;
  - (d) rules under section 105ZF;
  - (e) rules under section 110F;
  - (f) rules under section 144ZA.
- (3) Guidance under subsection (1) or (2) may include other guidance about the provisions of any of the rules mentioned in subsection (1) or (2).
- (4) The Minister may issue guidance about the principles to be applied by the Authority in determining the contents of other documents produced by the Authority about charges that may be imposed by relevant undertakers or water supply or sewerage licensees.
- (5) Guidance under subsection (4) may include other guidance about the contents of the documents mentioned in subsection (4).
- (6) The Authority must have regard to guidance issued under this section when making rules to which the guidance relates (as well as to any guidance relating to those rules issued under another provision of this Act).
- (7) If—
  - (a) the Minister issues guidance under this section in respect of rules made under a particular provision, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise rules made by it under that provision,the Authority must issue revised rules under that provision.

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- (8) Before issuing guidance under this section, the Minister must—
  - (a) prepare a draft of the proposed guidance;
  - (b) consult the relevant persons about the draft;
  - (c) comply with the requirements of section 144ZF.
- (9) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any relevant undertakers likely to be affected by the proposed guidance;
  - (e) any water supply licensees or sewerage licensees likely to be affected by the proposed guidance;
  - (f) such other persons as the Minister thinks appropriate.
- (10) The Minister may from time to time revise guidance issued under this section and issue revised guidance.
- (11) Subsections (8) and (9) apply to revised guidance as they apply to the original guidance.
- (12) The Minister must arrange for the publication of guidance issued under this section.
- (13) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.

#### **144ZF Guidance under section 144ZE: procedure**

- (1) Before issuing guidance under section 144ZE, the Secretary of State must lay a draft of the proposed guidance before both Houses of Parliament.
- (2) The Secretary of State must not issue the guidance until after the period of 40 days beginning with—
  - (a) the day on which the draft is laid before both Houses of Parliament, or
  - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (3) If before the end of that period either House resolves that the guidance should not be issued, the Secretary of State may not issue it.
- (4) In reckoning any period of 40 days for the purposes of subsection (2), no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses are adjourned for more than four days.
- (5) Before issuing guidance under section 144ZE, the Welsh Ministers must lay a draft of the proposed guidance before the Assembly.

- (6) The Welsh Ministers must not issue the guidance until after the period of 40 days beginning with the day on which the draft is laid before the Assembly.
- (7) If before the end of that period the Assembly resolves that the guidance should not be issued, the Welsh Ministers may not issue it.
- (8) In reckoning any period of 40 days for the purposes of subsection (6), no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than four days.
- (9) Nothing in this section prevents the Secretary of State and the Welsh Ministers issuing a single document containing guidance under section 144ZE, and preparing draft guidance accordingly.”

#### *Adjudication functions*

### **39 Exercise of adjudication functions by other persons**

After section 207C of the Water Industry Act 1991 (inserted by section 37) there is inserted—

#### *“Adjudication*

##### **207D Exercise of adjudication functions by other persons**

- (1) The Minister may by order made by statutory instrument provide that any of the Authority’s adjudication functions (see subsection (4)) is to be exercised—
  - (a) on the Authority’s behalf, by such person as may be specified in the order, or
  - (b) either by the Authority or, on the Authority’s behalf, by such person as may be specified in the order, at the option of the Authority in any particular case.
- (2) An order under subsection (1) may—
  - (a) provide for requirements applying to the exercise of a function by the Authority to apply to the exercise of the function by another person;
  - (b) require the Authority to produce guidance as to the exercise by another person of one of the Authority’s adjudication functions and to keep such guidance up to date;
  - (c) require a person exercising one of the Authority’s adjudication functions to have regard to—
    - (i) any guidance to which the Authority would have regard in exercising that function;
    - (ii) any guidance produced by the Authority as to the exercise of that function.
- (3) An order under subsection (1) may—
  - (a) make different provision for different purposes;
  - (b) apply any primary or secondary legislation with or without modifications;
  - (c) make supplemental, consequential and transitional provision.

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- (4) For the purposes of this section, the Authority’s adjudication functions are—
- (a) the determination of any matter referred to it for determination under section 30A;
  - (b) the Authority’s functions under any of the following—
    - regulations made by virtue of section 38(4) (power to prescribe by regulations standards of performance for water undertakers as regards water supply in individual cases: provision for disputes etc);
    - regulations made by virtue of section 38ZA(4) (power to prescribe by regulations standards of performance for water supply licensees as regards water supply in individual cases: provision for disputes etc);
    - regulations made by virtue of section 95(4) (power to prescribe by regulations standards of performance for sewerage undertakers as regards sewerage services in individual cases: provision for disputes etc);
    - regulations made by virtue of section 95ZA(4) (power to prescribe by regulations standards of performance for sewerage licensees as regards sewerage services in individual cases: provision for disputes etc);
    - section 105 (appeals with respect to adoption of sewer etc);
    - section 105B (appeals relating to schemes for the adoption of sewers etc);
    - section 110 (determination of disputes with respect to cross boundary sewers);
    - section 112(2) and (3) (appeal against requirement that proposed drain or sewer be constructed so as to form part of general system);
    - section 122 (appeals relating to applications to discharge trade effluent);
    - section 126 (appeals with respect to variations of consent to discharge trade effluent);
    - section 128 (application for variation of time for discharge of trade effluent);
    - section 181 (investigation of complaints with respect to the exercise of works powers on private land);
- but do not include any functions as to enforcement under section 18.
- (5) In this section—
- “the Minister”, in relation to an adjudication function of the Authority, means—
- (a) the Secretary of State, to the extent that the function is to be exercised—
    - (i) in relation to a relevant undertaker whose area is wholly or mainly in England,
    - (ii) in relation to a water supply licensee using the supply system of such an undertaker (see section 17B), or
    - (iii) in relation to a sewerage licensee using the sewerage system of such an undertaker (see section 17BA);

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- (b) the Welsh Ministers, to the extent that the function is to be exercised—
    - (i) in relation to a relevant undertaker whose area is wholly or mainly in Wales, or
    - (ii) in relation to a water supply licensee using the supply system of such an undertaker (see section 17B);
- “primary legislation” means an Act or an Act or Measure of the Assembly;
- “secondary legislation” means an instrument made under primary legislation.
- (6) A statutory instrument containing an order made by the Secretary of State under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
  - (7) A statutory instrument containing an order made by the Welsh Ministers under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Assembly.”

#### *Drinking water inspectorate*

### **40 Charging of fees by assessors for the enforcement of water quality**

- (1) After section 86 of the Water Industry Act 1991 there is inserted—

#### **“86ZA Charging of fees**

- (1) The Secretary of State may by order made by statutory instrument confer power on the Chief Inspector of Drinking Water to charge fees for the exercise of a function by an inspector appointed by the Secretary of State under section 86 (and to determine their amount).
- (2) The Welsh Ministers may by order made by statutory instrument confer power on the designated person to charge fees for the exercise of a function by an inspector appointed by the Welsh Ministers under section 86 (and to determine their amount).
- (3) In subsection (2) “the designated person” means—
  - (a) the Chief Inspector of Drinking Water for Wales, or
  - (b) if the same person is designated under section 86(1A) and (1B), the Chief Inspector of Drinking Water in that person’s capacity as a person designated by the Welsh Ministers under section 86(1B).
- (4) An order under this section may include consequential, supplementary, incidental or transitional provision, or savings.
- (5) A statutory instrument containing an order made by the Secretary of State under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing an order made by the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of the Assembly.

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- (7) Subsection (8) applies in relation to a statutory instrument containing both—
  - (a) an order under this section made by the Secretary of State, and
  - (b) an order under this section made by the Welsh Ministers.
- (8) If in accordance with subsection (5) or (6)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
  - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
 nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.”

- (2) In the Public Bodies Act 2011—
  - (a) subsections (3) and (4) of section 14 (power of the Welsh Ministers to modify by order the funding arrangements of inspectors appointed under section 86 of the Water Industry Act 1991) are repealed;
  - (b) in Schedule 4 (bodies and offices where power to modify funding arrangements), the entry relating to inspectors appointed by the Secretary of State under section 86 of the Water Industry Act 1991 is repealed.

*Provision of public sewers: premises in Wales*

**41 Disputes about the provision of public sewers: premises in Wales**

- (1) Section 101A of the Water Industry Act 1991 (further duty to provide sewers) is amended as follows.
- (2) In subsection (7)—
  - (a) for “Any dispute” there is substituted “Subsections (7A) and (7B) apply where there is a dispute”;
  - (b) the words following paragraph (c) are repealed.
- (3) After subsection (7) there is inserted—
  - “(7A) The dispute is to be determined by the appropriate person and may be referred to the appropriate person for determination by either of the parties to the dispute.
  - (7B) If the dispute is between a sewerage undertaker and an owner or occupier of premises in Wales, the NRBW must provide advice in relation to any of the matters mentioned in subsection (7)(a) to (c) if so requested by—
    - (a) either of the parties to the dispute, or
    - (b) the appropriate person.
  - (7C) Any advice provided by the NRBW under subsection (7B) must be provided to both parties to the dispute and to the appropriate person.”
- (4) In subsections (8)(a) and (9), for “subsection (7)” there is substituted “subsection (7A)”.
- (5) In subsections (8), (9), (10) and (11), for “appropriate agency”, in each place those words occur, there is substituted “appropriate person”.

- (6) In subsection (11), in paragraph (b)—
- (a) for “the NRBW” there is substituted “the Welsh Ministers”;
  - (b) at the end there is inserted “, or such person as the Welsh Ministers may from time to time appoint as the appropriate person in relation to such disputes.”
- (7) After subsection (11) there is inserted—
- “(12) A person may be appointed as the appropriate person under subsection (11) (b) only if the person is independent of the NRBW.
- (13) A person is independent of the NRBW for the purposes of subsection (12) if the person is—
- (a) an individual who is not a member of the NRBW or the NRBW’s staff, or
  - (b) a body none of whose members is a member of the NRBW or the NRBW’s staff.”

## CHAPTER 4

### RETAIL EXIT: NON-HOUSEHOLD PREMISES

#### **42 Retail exit: non-household premises**

- (1) The Secretary of State may by regulations (“exit regulations”)—
- (a) make provision for a relevant undertaker whose area is wholly or mainly in England to apply to withdraw from the non-household retail market in relation to that area,
  - (b) make provision about the determination of an application under paragraph (a) (an “exit application”),
  - (c) make provision for and in connection with the transfer of so much of a relevant undertaker’s undertaking as relates to the non-household retail market to an eligible licensee or licensees, and
  - (d) make provision about the operation of the water industry in relation to an area in respect of which an exit application has been granted (a “retail exit area”).
- (2) Provision under subsection (1)(a) may require a company that is a water undertaker and a sewerage undertaker to make an exit application that relates both to its functions as a water undertaker and to its functions as a sewerage undertaker, subject to such exceptions as exit regulations may specify.
- (3) Exit regulations may include provision for protecting customers affected by a relevant undertaker’s withdrawal from the non-household retail market.
- (4) For the purposes of this Chapter—
- (a) a reference to a water undertaker withdrawing from the non-household retail market in relation to an area is a reference to a water undertaker ceasing, in relation to that area, to exercise such functions relating to the supply of water to non-household premises as are specified in exit regulations, and
  - (b) a reference to a sewerage undertaker withdrawing from the non-household retail market in relation to an area is a reference to a sewerage undertaker ceasing, in relation to that area, to exercise such functions relating to

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the provision of sewerage services in respect of non-household premises (including trade effluent functions) as are specified in exit regulations;  
and a reference to the non-household retail market is to be construed accordingly.

- (5) Exit regulations may—
- (a) prohibit a water undertaker from exercising, in relation to a retail exit area, such functions relating to the supply of water to non-household premises as are specified in the regulations;
  - (b) prohibit a sewerage undertaker from exercising, in relation to a retail exit area, such functions relating to the provision of sewerage services in respect of non-household premises (including trade effluent functions) as are specified in the regulations.

### **43 Application for retail exit**

- (1) Exit regulations about exit applications must make provision requiring a relevant undertaker to apply to the Secretary of State, and may include—
- (a) provision requiring a relevant undertaker to take such steps as the regulations may specify before making an application;
  - (b) provision as to the form and manner in which an application is to be made and as to the contents of an application;
  - (c) provision about payment to the Secretary of State of a fee of an amount specified in or determined under the regulations;
  - (d) provision about the information that is to accompany an application;
  - (e) provision for the Secretary of State to require a relevant undertaker to provide such further information as the Secretary of State may require in order to make a determination;
  - (f) provision as to the grounds on which an application may be refused;
  - (g) provision for the Secretary of State to grant an application subject to conditions.
- (2) Provision under subsection (1)(a) may require a relevant undertaker—
- (a) to consult—
    - (i) its non-household customers and its other customers,
    - (ii) the WSRA,
    - (iii) the Chief Inspector of Drinking Water,
    - (iv) the Consumer Council for Water, and
    - (v) any other person specified in the regulations;
  - (b) to prepare and publish a report assessing the effect on non-household customers and other customers if the undertaker withdraws from the non-household retail market;
  - (c) to publish notice of its proposed exit application in such manner as the regulations may specify.
- (3) The grounds that may be specified under subsection (1)(f) include—
- (a) grounds relating to the public interest or to the interests of a section of the public;
  - (b) grounds relating to the interests of non-household customers or other customers;

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- (c) grounds relating to costs associated with a transfer of part of the relevant undertaker's undertaking;
  - (d) grounds relating to the eligible licensee or licensees to which a transfer of part of the relevant undertaker's undertaking is proposed to be made.
- (4) The conditions that may be imposed under subsection (1)(g) include—
- (a) conditions as to the persons who are to pay the costs associated with a transfer of a part of the relevant undertaker's undertaking;
  - (b) conditions as to the application of money received by the relevant undertaker in connection with a transfer of a part of its undertaking;
  - (c) conditions about the relevant undertaker giving consent to modifications of the undertaker's conditions of appointment;
  - (d) conditions about an eligible licensee to which a transfer of part of the relevant undertaker's undertaking is proposed to be made giving consent to modifications of the conditions of its water supply licence or sewerage licence;
  - (e) conditions about the treatment of non-household customers affected by the transfer of part of the relevant undertaker's undertaking.
- (5) Exit regulations may make provision about how particular descriptions of customers and premises are affected by a relevant undertaker's withdrawal from the non-household retail market, including in particular any of the following—
- (a) premises to which the supply of water has been disconnected,
  - (b) premises that are to be demolished,
  - (c) premises that are temporarily unoccupied,
  - (d) premises in relation to which the owner or occupier has served notice under section 63AA of the Water Industry Act 1991 (supply by water supply licensee: domestic supply),
  - (e) premises in relation to which the owner or occupier has served notice under section 63AB of the Water Industry Act 1991 (supply by water supply licensee: non-domestic supply), and
  - (f) premises in relation to which the owner or occupier has served notice under section 110K of the Water Industry Act 1991 (provision by sewerage licensee).
- (6) Provision under subsection (5) may include provision about how exit applications deal with particular descriptions of customers and premises.
- (7) Exit regulations may make provision about the disclosure by a relevant undertaker of such information as the regulations may specify about—
- (a) its non-household customers, and
  - (b) the charges payable by them (whether payable under a charges scheme under section 143 of the Water Industry Act 1991 or under an agreement).
- (8) Exit regulations may specify—
- (a) the persons to whom the information may be disclosed;
  - (b) the purposes for which it may be disclosed.

#### **44 Eligible licensees**

- (1) Exit regulations may—

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- (a) make provision for a relevant undertaker to specify in its exit application the eligible licensee or licensees to which it proposes to transfer a part of its undertaking;
  - (b) make provision for the WSRA to direct one or more eligible licensees to accept the transfer of a part of the relevant undertaker's undertaking.
- (2) In this Chapter an "eligible licensee" is a company—
- (a) that has a water supply licence with a retail authorisation or a sewerage licence with a retail authorisation, or both, and
  - (b) that has elected to be an eligible licensee for the purposes of this Chapter.
- (3) Exit regulations may—
- (a) provide for an eligible licensee to be specified in an exit application only if the licensee agrees to be so specified;
  - (b) provide for the WSRA to give notice before giving a direction under subsection (1)(b);
  - (c) provide for an eligible licensee to temporarily suspend an election under subsection (2)(b) so that it may not be given a direction under subsection (1)(b).
- (4) Exit regulations may make provision about electing to be an eligible licensee, and may in particular—
- (a) provide for a company to satisfy such criteria as are set out in a code published by the WSRA before the company may elect to be an eligible licensee;
  - (b) provide for the WSRA to assess whether a company satisfies those criteria;
  - (c) provide for the WSRA to publish a code setting out—
    - (i) the criteria mentioned in paragraph (a), and
    - (ii) how it conducts such assessments;
  - (d) provide for the WSRA to comply with the code in making such assessments.
- (5) Exit regulations may—
- (a) allow an eligible licensee, to which a transfer of a part of a relevant undertaker's undertaking is proposed to be made, to be a company associated with the undertaker,
  - (b) require the eligible licensee to which such a transfer is made to be such a company, or
  - (c) prohibit such a transfer being made to such a company.
- (6) For the purposes of this section, a relevant undertaker is associated with an eligible licensee if one of them is a subsidiary of the other or both are subsidiaries of the same body corporate.

#### **45 Transfer of undertaking**

- (1) Exit regulations about the transfer of a part of a relevant undertaker's undertaking may include provision for the making of a scheme to transfer property, rights and liabilities where an exit application has been granted.
- (2) Exit regulations about the transfer of a part of a relevant undertaker's undertaking may include provision about arrangements under Chapter 1 of Part 5 of the Water Industry Act 1991 for fixing, demanding and recovering charges.

- (3) Provision under subsection (2) may include—
  - (a) provision for and in connection with treating such arrangements as if they were agreements between the undertaker and the person liable to pay such charges;
  - (b) provision about the terms and conditions of such agreements.
- (4) Exit regulations may make provision for a scheme under subsection (1) to contain—
  - (a) provision identifying the property, rights and liabilities to be transferred (which may include property, rights and liabilities that would not otherwise be capable of being transferred);
  - (b) provision for the division of property, rights and liabilities, including—
    - (i) provision creating an interest in or right over property;
    - (ii) provision creating new rights and liabilities;
    - (iii) incidental provision as to the property, rights and liabilities of other persons;
  - (c) provision about the consideration to be provided (and about the enforcement of such provision).
- (5) Subsection (4) is not exhaustive of what a scheme may contain.

#### **46 Operation of retail market**

- (1) Exit regulations about the operation of the water industry in relation to a retail exit area may include such provision as is described in the following subsections.
- (2) Exit regulations may make provision for and in connection with requiring a relevant undertaker to impose on an eligible licensee only such charges under a section 66D agreement or a section 117E agreement as would enable the licensee to fulfil its obligations under agreements (including deemed agreements) transferred to the licensee from the undertaker under the regulations.
- (3) Exit regulations may make provision for and in connection with requiring a water supply or sewerage licensee, where the licensee is providing services under the licensee's licence in relation to a retail exit area, to provide such services under that licence in relation to that area as the regulations may specify.
- (4) Exit regulations may make provision for and in connection with such arrangements between a water supply or sewerage licensee and a relevant undertaker as would enable the licensee to comply with requirements imposed on it under subsection (3).
- (5) Exit regulations may make provision as to the functions of a relevant undertaker in relation to a retail exit area and may, in particular, modify or disapply a duty imposed on a relevant undertaker by—
  - (a) section 63AC(2) (interim duty to supply water), or
  - (b) section 110L(2) (interim duty to provide sewerage services).
- (6) Exit regulations may provide for a water supply or sewerage licensee that—
  - (a) is a company,
  - (b) is providing services under its licence in relation to a retail exit area, and
  - (c) satisfies such criteria as may be specified by the regulations (which may include criteria as to market share),

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to be subject to provision for special administration (see section 23 of, and Schedule 2 to, the Water Industry Act 1991) in such circumstances as the regulations may specify.

- (7) Exit regulations may include provision—
- (a) requiring relevant undertakers, water supply licensees and sewerage licensees to provide such information as the regulations may specify to customers;
  - (b) requiring relevant undertakers, water supply licensees and sewerage licensees to provide such information as the regulations may specify to the WSRA or the Secretary of State;
  - (c) requiring the WSRA to record such information as the regulations may specify in the register it maintains under section 195 of the Water Industry Act 1991.
- (8) Provision under subsection (7)(b) may in particular specify information about customers and the arrangements under which they receive services.

#### **47 Operation of retail market: charges etc**

- (1) Exit regulations may make provision for water supply licensees and sewerage licensees, that are providing or proposing to provide services under their water supply or sewerage licences in relation to a retail exit area, to make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to such services.
- (2) Provision under subsection (1) may include—
- (a) provision for a scheme to make different provision for different purposes, or different areas;
  - (b) provision about the publication of a scheme or revised scheme;
  - (c) provision about sending a copy of a scheme or revised scheme to the WSRA;
  - (d) provision enabling the WSRA to direct that terms or conditions be modified generally or in a particular case;
  - (e) provision requiring a licensee to comply with a direction under paragraph (d), including provision for enforcing such a duty under section 18 of the Water Industry Act 1991.
- (3) Provision under subsection (1) may also include—
- (a) provision requiring the WSRA to issue a code about providing services to which a scheme under subsection (1) relates;
  - (b) provision for the code to include, in particular, provision about—
    - (i) the terms and conditions contained in such schemes;
    - (ii) licensees informing owners or occupiers of premises about their schemes before agreeing any terms and conditions for the provision of services;
  - (c) provision for the WSRA, if it considers that a licensee is not acting as required by such provision as is described in paragraph (b), to give the licensee a direction to do, or not to do, a particular thing specified in the direction;
  - (d) provision requiring a licensee to comply with a direction under paragraph (c), including provision for enforcing such a duty under section 18 of the Water Industry Act 1991;
  - (e) provision requiring the WSRA from time to time to review the code and, if appropriate, to issue a revised code.
- (4) Exit regulations may make provision for the WSRA to issue and enforce—

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- (a) rules about charges for services that may be imposed by water supply or sewerage licensees in relation to a retail exit area;
  - (b) if exit regulations make provision for licensees to make schemes about such charges, rules about such schemes.
- (5) Provision under subsection (4) may include—
- (a) provision for the rules to make different provision for different cases;
  - (b) provision for the WSRA to direct a licensee to comply with the rules;
  - (c) provision for such directions to be enforceable by the WSRA under section 18;
  - (d) provision for the Secretary of State to issue guidance as to the content of the rules;
  - (e) provision for the Secretary of State to prevent rules being issued.

#### **48 Exit applications: further provision**

- (1) Exit regulations may make provision about the provision relating to exit applications that may be included in a relevant undertaker's conditions of appointment.
- (2) Exit regulations may in particular prohibit the inclusion of provision requiring a relevant undertaker to make an exit application.
- (3) Exit regulations may make provision for requiring the WSRA or the CMA to obtain the consent of the Secretary of State—
  - (a) before exercising a function so as to require a relevant undertaker to make an exit application, or
  - (b) before exercising a function in a way that is likely to result in a relevant undertaker making an exit application.

#### **49 Modification of appointment and licence conditions**

- (1) Exit regulations may provide for the WSRA to modify the conditions of appointment of a relevant undertaker where it considers it necessary or expedient to do so in consequence of the transfer of part of the relevant undertaker's undertaking under the regulations.
- (2) Exit regulations may provide for the WSRA to modify the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 where it considers it necessary or expedient to do so in consequence of the transfer to the holder of that licence of part of a relevant undertaker's undertaking under the regulations.
- (3) Exit regulations may provide for the WSRA, where it modifies conditions under subsection (1) or (2), to make such incidental or consequential modifications of other conditions of the appointment or, as the case may be, other conditions of the licence as it considers necessary or expedient.
- (4) Provision made by exit regulations as regards the modification of conditions under this section may include—
  - (a) provision for the Secretary of State to give consent to a modification proposed by the WSRA;
  - (b) provision as to the period during which a modification may be made.

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- (5) Provision under subsection (4)(b) may not allow a modification to be made after the end of the period of one year beginning with the day on which the transfer in question takes place.

## 50 General directions

- (1) Exit regulations may make provision for the Secretary of State to publish, from time to time, a statement setting out general directions for the WSRA and the CMA as regards the carrying out of their relevant functions in circumstances where the WSRA or the CMA, in carrying out those functions, might be able—
- (a) to require or bring about an exit application, or
  - (b) to have an effect as regards the making of an exit application.
- (2) Exit regulations may require the WSRA and the CMA to carry out their relevant functions in accordance with any statement published under the regulations.
- (3) Exit regulations may make provision about formulating a statement to be published under the regulations, and may in particular—
- (a) require the Secretary of State to have regard to—
    - (i) the duties of the WSRA mentioned in section 2(1)(b) of the Water Industry Act 1991,
    - (ii) the duties of the CMA under the Competition Act 1998 or the Enterprise Act 2002, and
    - (iii) the protection of the interests of consumers (within the meaning of section 2 of the Water Industry Act 1991), and
  - (b) enable the Secretary of State to have regard to such other matters as the Secretary of State thinks fit.
- (4) Exit regulations may make provision for the Secretary of State, before publishing a statement under the regulations, to consult—
- (a) the WSRA,
  - (b) the CMA,
  - (c) the Consumer Council for Water,
  - (d) relevant undertakers,
  - (e) water supply licensees and sewerage licensees,
  - (f) the Welsh Ministers, and
  - (g) anyone else the Secretary of State thinks appropriate.
- (5) Exit regulations may—
- (a) require the Secretary of State to lay a draft of a statement before Parliament before publishing it;
  - (b) require the Secretary of State to wait for a period specified in or determined under the regulations after laying the draft statement under paragraph (a);
  - (c) prohibit the Secretary of State from publishing it if, within that period, either House of Parliament resolves not to approve it.
- (6) In this section “relevant function” means—
- (a) in relation to the WSRA, a function mentioned in section 2(1)(b) of the Water Industry Act 1991;

- (b) in relation to the CMA, a function of the CMA under the Competition Act 1998 or the Enterprise Act 2002.

## **51 Exit regulations: general**

- (1) Exit regulations may make such provision as the Secretary of State considers appropriate—
  - (a) for modifying a person’s duties and powers, and
  - (b) for imposing new duties and conferring new powers on a person.
- (2) The persons in relation to whom provision under subsection (1) may be made include—
  - (a) the Secretary of State;
  - (b) the Chief Inspector of Drinking Water;
  - (c) the Welsh Ministers;
  - (d) the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) of the Water Industry Act 1991 applies;
  - (e) the WSRA;
  - (f) the CMA;
  - (g) the Environment Agency;
  - (h) the NRBW;
  - (i) the Consumer Council for Water;
  - (j) relevant undertakers;
  - (k) water supply licensees and sewerage licensees.
- (3) Exit regulations may—
  - (a) apply enactments, with or without such modifications as the Secretary of State thinks fit;
  - (b) amend, repeal or revoke enactments.
- (4) The provision that may be made by exit regulations includes provision conferring power to make subordinate legislation.
- (5) Exit regulations may—
  - (a) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking enactments) as the Secretary of State considers appropriate, and
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or areas.
- (6) In this section “enactment”—
  - (a) includes an Act or Measure of the National Assembly for Wales;
  - (b) includes an enactment contained in this Act, other than this Chapter.

## **52 Interpretation**

- (1) In this Chapter—
  - “the CMA” means the Competition and Markets Authority;
  - “eligible licensee” has the meaning given by section 44;

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- “exit application” means an application under section 42(1)(a);
- “the NRBW” means the Natural Resources Body for Wales;
- “non-household customer” means a person who is the customer as regards a service provided in respect of non-household premises;
- “non-household premises” means premises other than household premises as defined in section 17C of the Water Industry Act 1991;
- “retail exit area” has the meaning given by section 42;
- “the WSRA” means the Water Services Regulation Authority.

- (2) Except in so far as the context otherwise requires, terms used in this Chapter have the same meaning as in the Water Industry Act 1991.

### **53 Procedure**

- (1) Before making exit regulations, the Secretary of State is to consult—
- (a) the Welsh Ministers;
  - (b) the WSRA;
  - (c) the CMA;
  - (d) the Consumer Council for Water;
  - (e) relevant undertakers whose areas are wholly or mainly in England;
  - (f) water supply licensees and sewerage licensees;
  - (g) persons whom the Secretary of State considers to represent the interests of investors in the water industry.
- (2) The power to make exit regulations is to be exercised by statutory instrument.
- (3) A statutory instrument containing exit regulations made by the Secretary of State may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

## **CHAPTER 5**

### MISCELLANEOUS

### **54 Consumer redress**

- (1) The Water Services Regulation Authority may modify the conditions of—
- (a) a pre-commencement appointment of a water or sewerage undertaker, or
  - (b) a pre-commencement water supply licence,
- so as to include conditions relating to the provision of a consumer redress scheme.
- (2) In subsection (1)—
- (a) “pre-commencement appointment of a water or sewerage undertaker” means an appointment of a company under Chapter 1 of Part 2 of the Water Industry Act 1991 to be a water or sewerage undertaker which is made before the day on which this section comes into force, and
  - (b) “pre-commencement water supply licence” means a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 granted before that day.

- (3) In this section, “consumer redress scheme” means a scheme or other arrangements for unresolved complaints to be investigated and determined by an independent person.
- (4) The conditions that may under subsection (1) be included in an appointment or licence include in particular conditions requiring the company holding the appointment or the person holding the licence—
  - (a) to secure the provision of a consumer redress scheme, or
  - (b) to secure the provision of a consumer redress scheme which is of a description specified in the conditions or which meets requirements so specified.
- (5) Where under subsection (1) the Authority modifies conditions of an appointment or licence, it may make such incidental or consequential modifications of other conditions of the appointment or, as the case may be, other conditions of the licence as it considers necessary or expedient.
- (6) The power of the Authority under subsection (1) to modify the conditions of an appointment or licence may not be exercised after the end of the period of two years beginning with the day on which this section comes into force.
- (7) Before making a modification under this section the Authority must consult—
  - (a) the company holding the appointment or the person holding the licence;
  - (b) the Secretary of State;
  - (c) the Welsh Ministers;
  - (d) the Consumer Council for Water;
  - (e) such other persons as the Authority thinks it appropriate to consult.
- (8) The Minister may direct the Authority not to make a modification that it proposes to make under this section; and the Authority must comply with such a direction.
- (9) In subsection (8) “the Minister” means—
  - (a) the Secretary of State, in relation to—
    - (i) a water or sewerage undertaker whose area is wholly or mainly in England;
    - (ii) a person who holds a licence under Chapter 1A of Part 2 of the Water Industry Act 1991;
  - (b) the Welsh Ministers, in relation to a water or sewerage undertaker whose area is wholly or mainly in Wales.

## **55 Modification of appointment and licence conditions**

- (1) The Water Services Regulation Authority may modify the conditions of appointment of a company appointed under Chapter 1 of Part 2 of the Water Industry Act 1991 to be a water or sewerage undertaker where it considers it necessary or expedient to do so in consequence of provision made by or under this Part.
- (2) The Authority may modify the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 where it considers it necessary or expedient to do so in consequence of provision made by or under this Part.
- (3) Where the Authority modifies—
  - (a) conditions of appointment under subsection (1), or
  - (b) conditions of a licence under subsection (2),

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it may make such incidental or consequential modifications of other conditions of the appointment or, as the case may be, other conditions of the licence as it considers necessary or expedient.

- (4) Before making a modification under this section, the Authority must consult—
- (a) the company holding the appointment or, as the case may be, the person holding the licence;
  - (b) the Secretary of State;
  - (c) the Welsh Ministers;
  - (d) such other persons as the Authority thinks it appropriate to consult.
- (5) The power of the Authority to modify—
- (a) the conditions of a company’s appointment under subsection (1), or
  - (b) the conditions of a person’s licence under subsection (2),
- may not be exercised after the end of the period of two years beginning with the day on which the provision in question comes into force.
- (6) References in subsections (1) to (5) to provision made by or under this Part are to be treated, where particular provision made by or under this Part comes into force on a particular day for a particular purpose, as references to so much of such provision as comes into force on a particular day.
- (7) References in this section to provision made by or under this Part include references to provision made under section 90 or 91 in connection with this Part.
- (8) The Minister may give directions to the Authority for the purpose of securing that—
- (a) the conditions of appointment of a water or sewerage undertaker are modified under this section;
  - (b) the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 are modified under this section.
- (9) The Minister may direct the Authority not to make a modification that it proposes to make under this section.
- (10) The Authority must comply with a direction under subsection (8) or (9).
- (11) In this section “the Minister” means—
- (a) the Secretary of State, in relation to—
    - (i) a water or sewerage undertaker whose area is wholly or mainly in England;
    - (ii) a person who holds a licence under Chapter 1A of Part 2 of the Water Industry Act 1991;
  - (b) the Welsh Ministers, in relation to a water or sewerage undertaker whose area is wholly or mainly in Wales.

## 56 Further amendments

Schedule 7 (which contains further amendments) has effect.

## PART 2

### WATER RESOURCES

#### 57 Report on water abstraction reform

- (1) The Secretary of State must prepare a report setting out progress made in reforming the arrangements for managing water abstraction in England.
- (2) The Secretary of State must lay before Parliament a copy of the report.
- (3) The report must be prepared and laid before the end of the period of five years beginning with the day on which this Act is passed.

#### 58 Withdrawal of compensation for undertakers

- (1) The Water Resources Act 1991 is amended as follows.
- (2) In section 61 (compensation where licence modified on direction of the Secretary of State or Welsh Ministers), in subsection (1), after “Where a licence” there is inserted “held by a person other than a water undertaker or sewerage undertaker”.
- (3) Section 61A (recovery of compensation from new licence-holder) is repealed.

#### 59 Main rivers in England and Wales

- (1) The Water Resources Act 1991 is amended as follows.
- (2) For sections 193 and 194 (maintenance, inspection and amendment of main river maps for areas in England and Wales) there is substituted—

*“Main river map for England*

##### **193 The main river map for England**

- (1) The Agency must keep the main river map for England.
- (2) For the purposes of this Act the main river map for England is a record of areas in England which—
  - (a) shows the extent to which any watercourse or part of a watercourse is to be treated as a main river or as part of a main river for the purposes of this Act, and
  - (b) indicates which (if any) of those watercourses are watercourses designated in a scheme made under section 137.
- (3) The map is conclusive as to the extent to which a watercourse in England is to be treated as a main river or as part of a main river for the purposes of this Act.
- (4) The map must specify the date on which it takes effect.
- (5) The Agency must keep the map in electronic form.
- (6) In this section and sections 193A to 193E “watercourse” has the same meaning as in Part 4 of this Act.

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

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### 193A Inspection and copies

- (1) The Agency must provide reasonable facilities for inspecting the main river map for England in electronic form.
- (2) The Agency must on request provide any person with—
  - (a) a hard copy of all or part of the map, or
  - (b) data comprising all or part of the map in electronic form.
- (3) The Agency may charge a fee for providing a copy or data under subsection (2), but the fee—
  - (a) must, in the case of a person appearing to the Agency to have requested a copy or data for commercial purposes, represent a reasonable usage fee, and
  - (b) in any other case, may not exceed the reasonable costs of providing the copy or data.
- (4) The Agency must on request provide a body mentioned in the first column of the following table with a hard copy of, or data comprising, such part of the main river map for England as is described in the second column of the entry for that body.

A local authority in England	The part that relates to the local authority's area
An internal drainage board for an internal drainage district that is wholly or partly in England	The part that relates to its district, so far as that district is in England
A water company that exercises functions in relation to an area in England	The part that relates to that area
A highway authority that exercises functions in relation to highways in England	The part that relates to the area in England in relation to which it exercises functions
A navigation authority that exercises functions in relation to an area in England	The part that relates to that area

- (5) The Documentary Evidence Act 1868 has effect as if—
  - (a) the Agency were mentioned in the first column of the Schedule to that Act;
  - (b) any member of the staff of the Agency authorised to act on behalf of the Agency were specified in the second column of the Schedule to that Act in connection with the Agency;
  - (c) the regulation referred to in that Act included the main river map for England kept by the Agency;
  - (d) references to a copy included references to a print-out of information kept in electronic form.

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

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### **193B Replacing the main river map for England**

- (1) The Agency may at any time replace the existing main river map for England for the purpose of including—
  - (a) a change which, pursuant to section 193(2)(b), is required by the making, amendment or revocation of a scheme under section 137,
  - (b) a change to give effect to a determination under section 193C, or
  - (c) a change directed by the Secretary of State under section 193D(5) (following an appeal against a determination).
- (2) A replacement map may not include other changes.
- (3) A replacement map must specify the date on which it takes effect.

### **193C Determinations as to main rivers**

- (1) Subject to the following provisions of this section, the Agency may determine that—
  - (a) such watercourse or part of a watercourse in England as is specified in the determination is to be treated for the purposes of this Act as a main river or part of a main river;
  - (b) such watercourse or part of a watercourse in England as is specified in the determination (not being a watercourse designated in a scheme made under section 137) is no longer to be treated for the purposes of this Act as a main river or part of a main river.
- (2) Before making a determination under subsection (1) as regards a watercourse, the Agency must—
  - (a) publish (in such manner as it considers appropriate) the determination it proposes to make, and
  - (b) consider representations made within the time and in the manner specified by the Agency when publishing the determination.
- (3) The Agency must consult the NRBW before making a determination under subsection (1)—
  - (a) which affects a watercourse part of which is in England and part of which is in Wales, and
  - (b) in which it seems to the Agency that the NRBW has an interest.
- (4) Having taken such steps as are required by subsections (2) and (3), the Agency may—
  - (a) decide not to make a determination, or
  - (b) decide to make a determination in accordance with what was proposed under subsection (2)(a) or otherwise.
- (5) The Agency must publish (in such manner as it considers appropriate)—
  - (a) that decision;
  - (b) the terms of any determination made;
  - (c) if a determination is made, the date on which a replacement map will give effect to the determination.

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

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- (6) The date specified under subsection (5)(c) may not be before the end of a period of six weeks beginning with the day on which the matters specified in subsection (5) are published.
- (7) The Agency must also inform those persons affected by the proposal who made representations in accordance with subsection (2)(b) containing an objection to the proposal as to the matters referred to in subsection (5).

### **193D Appeals**

- (1) A person aggrieved by a determination under section 193C may appeal to the Secretary of State.
- (2) An appeal must be made before the end of a period of six weeks beginning with the day on which the matters referred to in section 193C(5) are published.
- (3) Where an appeal is made against a determination, a replacement map under section 193B may not include a change to give effect to the determination except as specified in this section.
- (4) The Secretary of State may appoint a person to make a report to assist the Secretary of State in determining the appeal.
- (5) If the Secretary of State allows the appeal in whole or in part, the Secretary of State may by direction to the Agency—
  - (a) specify a change to be included in a replacement map under section 193B, and
  - (b) specify the date on which that change is to take effect.
- (6) If the Secretary of State dismisses the appeal, the Agency may include a change to give effect to its determination in a replacement map, the replacement map to have effect on such date as the Secretary of State may direct.
- (7) The Secretary of State may direct the Agency to publish the Secretary of State's decision in such manner as the direction may specify.

### **193E Guidance**

- (1) The Secretary of State may from time to time issue guidance to the Agency about the exercise of its functions under sections 193 to 193D.
- (2) The guidance may in particular include guidance as to—
  - (a) determining whether or not a watercourse or part of a watercourse is suitable to become or to remain a main river or a part of a main river;
  - (b) what kind of publication is appropriate under section 193C(2) and (5).
- (3) The Agency must have regard to the guidance in carrying out its functions under sections 193 to 193D.

### *Main river map for Wales*

#### **194 The main river map for Wales**

- (1) The NRBW must keep the main river map for Wales.
- (2) For the purposes of this Act the main river map for Wales is a record of areas in Wales which—
  - (a) shows the extent to which any watercourse or part of a watercourse is to be treated as a main river or as part of a main river for the purposes of this Act, and
  - (b) indicates which (if any) of those watercourses are watercourses designated in a scheme made under section 137.
- (3) The map is conclusive as to the extent to which a watercourse in Wales is to be treated as a main river or as part of a main river for the purposes of this Act.
- (4) The map must specify the date on which it takes effect.
- (5) The NRBW must keep the map in electronic form.
- (6) In this section and sections 194A to 194E “watercourse” has the same meaning as in Part 4 of this Act.

#### **194A Inspection and copies**

- (1) The NRBW must provide reasonable facilities for inspecting the main river map for Wales in electronic form.
- (2) The NRBW must on request provide any person with—
  - (a) a hard copy of all or part of the map, or
  - (b) data comprising all or part of the map in electronic form.
- (3) The NRBW may charge a fee for providing a copy or data under subsection (2), but the fee—
  - (a) must, in the case of a person appearing to the NRBW to have requested a copy or data for commercial purposes, represent a reasonable usage fee, and
  - (b) in any other case, may not exceed the reasonable costs of providing the copy or data.
- (4) The NRBW must on request provide a body mentioned in the first column of the following table with a hard copy of, or data comprising, such part of the main river map for Wales as is described in the second column of the entry for that body.

A local authority in Wales	The part that relates to the local authority’s area
An internal drainage board for an internal drainage district that is wholly or partly in Wales	The part that relates to its district, so far as that district is in Wales

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A water company that exercises functions in relation to an area in Wales	The part that relates to that area
A highway authority that exercises functions in relation to highways in Wales	The part that relates to the area in Wales in relation to which it exercises functions
A navigation authority that exercises functions in relation to an area in Wales	The part that relates to that area

- (5) The Documentary Evidence Act 1868 has effect as if—
- (a) the NRBW were mentioned in the first column of the Schedule to that Act;
  - (b) any member of the staff of the NRBW authorised to act on behalf of the NRBW were specified in the second column of the Schedule to that Act in connection with the NRBW;
  - (c) the regulation referred to in that Act included the main river map for Wales kept by the NRBW;
  - (d) references to a copy included references to a print-out of information kept in electronic form.

#### **194B Replacing the main river map for Wales**

- (1) The NRBW may at any time replace the existing main river map for Wales for the purpose of including—
- (a) a change which, pursuant to section 194(2)(b), is required by the making, amendment or revocation of a scheme under section 137,
  - (b) a change to give effect to a determination under section 194C, or
  - (c) a change directed by the Welsh Ministers under section 194D(5) (following an appeal against a determination).
- (2) A replacement map may not include other changes.
- (3) A replacement map must specify the date on which it takes effect.

#### **194C Determinations as to main rivers**

- (1) Subject to the following provisions of this section, the NRBW may determine that—
- (a) such watercourse or part of a watercourse in Wales as is specified in the determination is to be treated for the purposes of this Act as a main river or part of a main river;
  - (b) such watercourse or part of a watercourse in Wales as is specified in the determination (not being a watercourse designated in a scheme made under section 137) is no longer to be treated for the purposes of this Act as a main river or part of a main river.
- (2) Before making a determination under subsection (1) as regards a watercourse, the NRBW must—
- (a) publish (in such manner as it considers appropriate) the determination it proposes to make, and
  - (b) consider representations made within the time and in the manner specified by the NRBW when publishing the determination.

- (3) The NRBW must consult the Agency before making a determination under subsection (1)—
  - (a) which affects a watercourse part of which is in Wales and part of which is in England, and
  - (b) in which it seems to the NRBW that the Agency has an interest.
- (4) Having taken such steps as are required by subsections (2) and (3), the NRBW may—
  - (a) decide not to make a determination, or
  - (b) decide to make a determination in accordance with what was proposed under subsection (2)(a) or otherwise.
- (5) The NRBW must publish (in such manner as it considers appropriate)—
  - (a) that decision;
  - (b) the terms of any determination made;
  - (c) if a determination is made, the date on which a replacement map will give effect to the determination.
- (6) The date specified under subsection (5)(c) may not be before the end of a period of six weeks beginning with the day on which the matters specified in subsection (5) are published.
- (7) The NRBW must also inform those persons affected by the proposal who made representations in accordance with subsection (2)(b) containing an objection to the proposal as to the matters referred to in subsection (5).

#### **194D Appeals**

- (1) A person aggrieved by a determination under section 194C may appeal to the Welsh Ministers.
- (2) An appeal must be made before the end of a period of six weeks beginning with the day on which the matters referred to in section 194C(5) are published.
- (3) Where an appeal is made against a determination, a replacement map under section 194B may not include a change to give effect to the determination except as specified in this section.
- (4) The Welsh Ministers may appoint a person to make a report to assist them in determining the appeal.
- (5) If the Welsh Ministers allow the appeal in whole or in part, they may by direction to the NRBW—
  - (a) specify a change to be included in a replacement map under section 194B, and
  - (b) specify the date on which that change is to take effect.
- (6) If the Welsh Ministers dismiss the appeal, the NRBW may include a change to give effect to its determination in a replacement map, the replacement map to have effect on such date as the Welsh Ministers may direct.
- (7) The Welsh Ministers may direct the NRBW to publish their decision in such manner as the direction may specify.

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

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### **194E Guidance**

- (1) The Welsh Ministers may from time to time issue guidance to the NRBW about the exercise of its functions under sections 194 to 194D.
- (2) The guidance may in particular include guidance as to—
  - (a) determining whether or not a watercourse or part of a watercourse is suitable to become or to remain a main river or a part of a main river;
  - (b) what kind of publication is appropriate under section 194C(2) and (5).
- (3) The NRBW must have regard to the guidance in carrying out its functions under sections 194 to 194D.”
- (3) In section 113 (interpretation of Part 4), in subsection (1), in the definition of “main river”, for “a main river map” there is substituted “the main river map for England or the main river map for Wales”.
- (4) In section 221 (interpretation of the Act), in subsection (1)—
  - (a) for the definition of “main river map” there is substituted—
 

“the main river map for England” has the meaning given by section 193(2);

“the main river map for Wales” has the meaning given by section 194(2);”;
  - (b) in the definition of “watercourse”, for “and 113(1)” there is substituted “113(1), 193(6) and 194(6)”.

## **60 Maps of waterworks**

- (1) Section 195 of the Water Resources Act 1991 (duty of appropriate agency to keep records of location of waterworks) is repealed.
- (2) In Schedule 23 to that Act (mineral rights), in paragraph 7(2) (structures and underground works which comprise appropriate agency’s undertaking), for paragraph (b) there is substituted—
 

“(b) any resource mains, discharge pipes or other underground works which are for the time being vested in the appropriate agency.”

## **PART 3**

### ENVIRONMENTAL REGULATION

## **61 Regulation of the water environment**

- (1) The Minister may by regulations make provision for any of the purposes listed in Part 1 of Schedule 8; and Part 2 of that Schedule has effect for supplementing Part 1.
- (2) Except as provided in Schedule 8, any provision so made is to be provision for or in connection with—
  - (a) regulating the use of water resources,
  - (b) securing the drainage of land or the management of flood risk, or
  - (c) safeguarding the movement of fish through regulated waters.

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- (3) In making regulations under this section, the Minister is to have regard to the desirability of reducing burdens by ensuring that so far as is reasonably practicable any system established by regulations under this section is combined with, or is consistent with, systems for regulating activities or other matters that cause pollution.
- (4) Regulations under this section may—
- (a) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking enactments) as the Minister considers appropriate, and
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities.
- (5) Before making any regulations under this section, the Minister is to consult—
- (a) the Environment Agency;
  - (b) the Natural Resources Body for Wales;
  - (c) such bodies or persons appearing to the Minister to be representative of the interests of local government, industry, agriculture and small businesses respectively as the Minister may consider appropriate;
  - (d) such other bodies or persons as the Minister may consider appropriate.
- (6) It is immaterial for the purposes of subsection (5) whether consultation is carried out before or after the coming into force of this section.
- (7) The Secretary of State’s power to make regulations under this section is subject to the consent of the Scottish Ministers so far as the regulations apply as mentioned in subsection (11)(b),
- (8) In this section and Schedule 8 a reference to the use of water resources—
- (a) includes a reference to taking, diverting or impounding water from any inland waters, or taking water contained in underground strata, and applying it to any purpose, and
  - (b) includes a reference to wasting water whether by action or omission, but
  - (c) does not include a reference to the use, by a person other than a water undertaker, of water drawn from a water mains or pipe forming part of a system used by a water undertaker in carrying out a duty under section 37 of the Water Industry Act 1991.
- (9) In this section and Schedule 8—
- “enactment” includes—
    - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
    - (b) an enactment contained in, or an instrument made under, an Act of the Scottish Parliament;
    - (c) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales;
  - “fish” means freshwater fish and migratory fish;
  - “flood” has the meaning given in section 1 of the Flood and Water Management Act 2010;
  - “flood risk” has the meaning given in section 2 of that Act;
  - “freshwater fish” means any fish habitually living in fresh water;

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“inland waters” has the meaning given by section 221(1) of the Water Resources Act 1991;

“migratory fish” means fish of a kind which migrates from fresh to salt water, or from salt to fresh water, in order to spawn;

“the Minister” means—

(a) the Secretary of State, in relation to England and in relation to so much of the River Esk and its banks and tributary streams as is mentioned in subsection (11)(b), and

(b) the Welsh Ministers, in relation to Wales;

“regulated waters” means—

(a) inland waters in England and Wales,

(b) the waters of so much of the River Esk and its tributary streams up to their source as is mentioned in subsection (11)(b), and

(c) waters adjoining the coast of England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured;

“Wales” has the meaning given in section 158(1) of the Government of Wales Act 2006.

- (10) The reference in subsection (8)(a) to water contained in underground strata is to be read in accordance with section 221(3) of the Water Resources Act 1991, as if this section formed part of that Act.
- (11) Regulations made in reliance on subsection (2)(c)—
- (a) are not to apply in relation to the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 ([S.I. 2006/2913](#))), but
  - (b) may apply in relation to so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland.
- (12) Regulations under this section may make provision applying in relation to (and to places above and below) the territorial waters adjacent to any part of England and Wales.

## **62 Environmental regulation: procedure**

- (1) The power to make regulations under section 61 is to be exercised by statutory instrument.
- (2) A statutory instrument containing regulations made by the Secretary of State under section 61 is subject to annulment in pursuance of a resolution of either House of Parliament, subject as follows.
- (3) A statutory instrument containing regulations made by the Welsh Ministers under section 61 is subject to annulment in pursuance of a resolution of the National Assembly for Wales, subject as follows.
- (4) A statutory instrument containing any of the following regulations (whether alone or with other regulations) is subject to the affirmative resolution procedure—
  - (a) the first regulations to be made by the Secretary of State under section 61;
  - (b) the first regulations to be made by the Welsh Ministers under section 61;
  - (c) regulations under section 61 which create an offence or increase a penalty for an existing offence;

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- (d) regulations under section 61 which amend or repeal any provision of an Act, or an Act or Measure of the National Assembly for Wales.
- (5) A statutory instrument containing regulations made by the Secretary of State under both section 61 above and section 2 of the Pollution Prevention and Control Act 1999 is subject to the affirmative resolution procedure if an instrument containing only—
  - (a) the regulations made by the Secretary of State under section 61 above, or
  - (b) the regulations made by the Secretary of State under section 2 of the Pollution Prevention and Control Act 1999,would be subject to the affirmative resolution procedure.
- (6) A statutory instrument containing regulations made by the Welsh Ministers under both section 61 above and section 2 of the Pollution Prevention and Control Act 1999 is subject to the affirmative resolution procedure if an instrument containing only—
  - (a) the regulations made by the Welsh Ministers under section 61 above, or
  - (b) the regulations made by the Welsh Ministers under section 2 of the Pollution Prevention and Control Act 1999,would be subject to the affirmative resolution procedure.
- (7) A statutory instrument containing regulations made by the Secretary of State that is subject to the affirmative resolution procedure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (8) A statutory instrument containing regulations made by the Welsh Ministers that is subject to the affirmative resolution procedure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (9) Subsections (11) and (12) apply in relation to a statutory instrument containing both—
  - (a) regulations under section 61 made or to be made by the Secretary of State, and
  - (b) regulations under section 61 made or to be made by the Welsh Ministers.
- (10) Subsections (11) and (12) also apply in relation to a statutory instrument containing—
  - (a) regulations under section 61 made or to be made by the Secretary of State,
  - (b) regulations under section 61 made or to be made by the Welsh Ministers, and
  - (c) regulations made under section 2 of the Pollution Prevention and Control Act 1999 (whether by the Secretary of State or the Welsh Ministers or both).
- (11) If in accordance with subsection (2) or (3) (negative resolution procedure)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
  - (b) the National Assembly for Wales resolves that an instrument containing regulations made by the Welsh Ministers be annulled,nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (12) If the statutory instrument contains any regulations which, on their own, would make the instrument subject to the affirmative resolution procedure, the instrument is subject to that procedure.

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(13) In section 2 of the Pollution Prevention and Control Act 1999, after subsection (9) there is inserted—

“(10) See section 62 of the Water Act 2014 for further provision about the procedure applying to statutory instruments containing both regulations made under this section and regulations made under section 61 of that Act.”

### **63 Repeal of certain provisions about culverts**

The following provisions of the Public Health Act 1936 are repealed—

- (a) section 262 (power of local authority to require culverting of watercourses and ditches where building operations in prospect);
- (b) section 263 (watercourses in urban districts not to be culverted except in accordance with approved plans).

## **PART 4**

### FLOOD INSURANCE

#### *The Flood Reinsurance Scheme*

### **64 The Flood Reinsurance Scheme**

- (1) For the purposes of this Part, the Flood Reinsurance Scheme is a scheme which—
  - (a) is established for the purpose mentioned in subsection (2), and
  - (b) is designated for the purposes of this Part by regulations made by the Secretary of State.
- (2) The purpose referred to in subsection (1)(a) is the purpose of providing reinsurance to relevant insurers in respect of such risks arising from a flood as are identified by the scheme, in such a way as to—
  - (a) promote the availability and affordability of flood insurance for household premises while minimising the costs of doing so, and
  - (b) manage, over the period of operation of the scheme, the transition to risk-reflective pricing of flood insurance for household premises.
- (3) The Secretary of State may by regulations make provision as to levels of reinsurance premiums payable by relevant insurers under the FR Scheme, and may make different provision for different purposes.
- (4) Regulations under subsection (3) may, in particular, make different provision for different purposes by reference to the value of the household premises insured.
- (5) In this section “flood insurance” means insurance in respect of risks arising from a flood.
- (6) In this Part, the Flood Reinsurance Scheme is called “the FR Scheme”.

## **65 Scheme administrator**

- (1) The FR Scheme is to be administered by a body designated by regulations made by the Secretary of State.
- (2) The Secretary of State may under subsection (1) designate a company registered under the Companies Act 2006 or a body of another kind.
- (3) In this Part, the body designated under subsection (1) is called “the FR Scheme administrator”.

## **66 Scheme funding**

- (1) The Secretary of State may, with the consent of the Treasury, make regulations requiring relevant insurers to pay to the FR Scheme administrator—
  - (a) a levy, the amount and timing of which is to be determined in accordance with the regulations;
  - (b) such further amounts, by way of levy or contribution, as may be requested by the FR Scheme administrator from time to time in accordance with the FR Scheme.
- (2) Regulations under subsection (1) may make provision as to—
  - (a) the circumstances in which a request under subsection (1)(b) may be made;
  - (b) the amounts that may be requested under subsection (1)(b).
- (3) The Secretary of State may by regulations make provision for amounts payable under subsection (1) to be recoverable summarily (or in Scotland recoverable) as a civil debt.
- (4) The Secretary of State may by regulations make provision as to the application of any amounts paid under subsection (1).
- (5) The Secretary of State may by regulations provide that, where such conditions as are specified in the regulations as regards the reserves of the FR Scheme are satisfied, the FR Scheme administrator must pay to the Secretary of State an amount of the reserves to be determined in accordance with the regulations.
- (6) Regulations under subsection (5) may—
  - (a) define “reserves”;
  - (b) make provision about determining the amount of the reserves of the FR Scheme.
- (7) Before making regulations under subsection (5), the Secretary of State must obtain the consent of the FR Scheme administrator, which is not to be unreasonably withheld.

## **67 Scheme administration**

- (1) The Secretary of State may by regulations make provision in connection with the administration of the FR Scheme.
- (2) Regulations under subsection (1) may require the FR Scheme administrator to have regard to the following in discharging its functions—
  - (a) the need to ensure economy, efficiency and effectiveness in the discharge of those functions,
  - (b) the need to act in the public interest,

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- (c) the need to ensure propriety and regularity in the operation of the FR Scheme, and
  - (d) the need to manage, over the period of operation of the FR Scheme, the transition to risk-reflective pricing of flood insurance for household premises.
- (3) Regulations under subsection (1) may require the FR Scheme administrator to produce and publish, in accordance with the regulations, a plan for achieving the transition mentioned in subsection (2)(d).
- (4) Regulations under subsection (1) may require the FR Scheme administrator to provide the following information to relevant insurers who have issued insurance policies that are reinsured under the FR Scheme, so that those insurers may supply the information to holders of those policies—
- (a) information about how to find out about the levels of flood risk to which an area in which household premises are situated is subject and how any flood risk may be managed;
  - (b) information about the FR Scheme, including information about the effect of section 64(2)(b) (transition to risk-reflective pricing of flood insurance for household premises).
- (5) Regulations under subsection (1) may—
- (a) limit, to any extent, the power of the FR Scheme administrator to borrow money or otherwise incur debt;
  - (b) make provision about the reserves of the FR Scheme, including limitations on draw downs and transfers;
  - (c) require the FR Scheme administrator to take steps to limit the overall net losses that may be incurred by the FR Scheme in any year to an amount specified in or determined in accordance with the regulations;
  - (d) provide for the form and contents of the FR Scheme’s accounts;
  - (e) provide for a copy of the audited FR Scheme’s accounts and a copy of the auditor’s report on those accounts to be laid before Parliament;
  - (f) provide for the Comptroller and Auditor General to examine—
    - (i) the economy, efficiency and effectiveness with which the FR Scheme administrator has used resources in discharging its functions, and
    - (ii) the propriety and regularity in the operation of the FR Scheme, and for a report on any such examination to be laid before Parliament;
  - (g) provide that for the purposes of an examination under paragraph (f)—
    - (i) the Comptroller and Auditor General is to have a right of access at all reasonable times to any of the documents relating to the FR Scheme, and
    - (ii) a person who holds or has control of any of those documents is to give the Comptroller and Auditor General any assistance, information or explanation which the Comptroller and Auditor General requires in relation to any of those documents.
- (6) Regulations under subsection (1) may—
- (a) require the FR Scheme administrator to designate an individual of a description specified in the regulations as the responsible officer of the FR Scheme;
  - (b) provide for the responsible officer to have such responsibilities in respect of—
    - (i) the FR Scheme’s finances,

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- (ii) the FR Scheme’s accounts,
  - (iii) accountability to Parliament for the economy, efficiency and effectiveness with which the FR Scheme uses resources in discharging its functions,
  - (iv) accountability to Parliament for propriety and regularity in the operation of the FR Scheme, and
  - (v) examinations and reports under subsection (5)(f),
- as are specified in the regulations.
- (7) Regulations under subsection (1) may make provision about the disclosure of information required for the purposes of the FR Scheme and may, in particular, require relevant insurers to supply to the FR Scheme administrator such information as it may request in relation to insurance policies issued by them.
- (8) Regulations under subsection (1) may provide for the supply by the FR Scheme administrator of information held by it in connection with the FR Scheme to—
- (a) the Environment Agency,
  - (b) the Scottish Environment Protection Agency,
  - (c) the Natural Resources Body for Wales,
  - (d) the Department of Agriculture and Rural Development in Northern Ireland, or
  - (e) such other body as may be specified in the regulations.
- (9) Regulations under subsection (1) may provide for the supply by the FR Scheme administrator of information held by it in connection with the FR Scheme to the Secretary of State for purposes relating to government accounting.
- (10) Subsections (2) to (9) are not exhaustive of what may be done under subsection (1).
- (11) In this section—
- “flood insurance” has the meaning given in section 64;
  - “the FR Scheme’s accounts” means the accounts for a financial year of the FR Scheme prepared by the FR Scheme administrator in respect of the FR Scheme.

## **68 Replacement of the scheme or administrator**

- (1) Where regulations under section 64 replace the FR Scheme by revoking a designation and making a new designation, the regulations may make such provision as the Secretary of State thinks fit in connection with the replacement of the old FR scheme with the new FR scheme.
- (2) Where regulations under section 65 replace the FR Scheme administrator by revoking a designation and making a new designation, the regulations may make provision for the transfer of property, rights and liabilities (whether or not otherwise capable of being transferred, and including pension liabilities in respect of staff) relating to the FR Scheme from the old administrator to the new administrator.

## **69 Disclosure of HMRC council tax information**

- (1) The Commissioners for Her Majesty’s Revenue and Customs may disclose relevant HMRC council tax information to any person who requires that information for either of the following descriptions of purposes—

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- (a) purposes connected with such scheme as may be established and designated in accordance with section 64 (in any case arising before any scheme is so designated);
  - (b) purposes connected with the FR Scheme (in any case arising after the designation of a scheme in accordance with section 64).
- (2) A person to whom information is disclosed under subsection (1)(a) or (b)—
- (a) may use the information only for the purposes mentioned in subsection (1)(a) or (b), as the case may be;
  - (b) may not further disclose the information except with the consent of the Commissioners.
- (3) In this section—
- “HMRC council tax information” means information which is held for council tax purposes by the Valuation Office of Her Majesty’s Revenue and Customs;
- “relevant HMRC council tax information” means HMRC council tax information relating to premises which are household premises and consisting of any of the following—
- (a) the address (including the postcode) of the premises;
  - (b) the council tax valuation band in which the premises fall;
  - (c) information about when the premises were constructed;
  - (d) the National Land and Property Gazetteer unique property reference number for the premises;
  - (e) the unique address reference number allocated to the premises by the Valuation Office of Her Majesty’s Revenue and Customs.
- (4) The Secretary of State may by regulations amend the definition of “relevant HMRC council tax information” in subsection (3).
- (5) If the Secretary of State by regulations under subsection (4) amends the definition of “relevant HMRC council tax information” to add further descriptions of information, those regulations may include the provision described in subsection (6).
- (6) The regulations may provide that if a person discloses, in contravention of subsection (2)(b), information which is relevant HMRC council tax information by virtue of the regulations and which relates to a person whose identity—
- (a) is specified in the disclosure, or
  - (b) can be deduced from it,
- section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure, in contravention of section 20(9) of that Act, of revenue and customs information relating to a person whose identity is specified in the disclosure or can be deduced from it.
- (7) The Secretary of State must consult the Commissioners for Her Majesty’s Revenue and Customs before making regulations under subsection (4).

### *Flood insurance obligations*

#### **70 Flood insurance obligations**

- (1) The Secretary of State may by regulations require a relevant insurer to issue in a prescribed period insurance policies that provide cover against a prescribed description of risk for a prescribed number of registered premises.
- (2) The regulations may prescribe different numbers of registered premises for different descriptions of risk.
- (3) The descriptions of risks that may be prescribed are those arising from a flood.
- (4) The regulations may provide for a prescribed number relating to a relevant insurer to be determined by reference to factors that include in particular—
  - (a) a target number (see section 71);
  - (b) the relevant insurer’s share of insurance business of a prescribed description.
- (5) The regulations may—
  - (a) make provision about determining the size of a relevant insurer’s share of insurance business of a prescribed description;
  - (b) provide for a relevant insurer to be exempt from the obligation described in subsection (1) in prescribed circumstances, whether wholly or so far as regards a particular description of risk, including circumstances relating to the amount of insurance business done by the relevant insurer;
  - (c) make provision about the circumstances in which a relevant insurer ceases to be subject to the obligation described in subsection (1), whether wholly or so far as regards a particular description of risk;
  - (d) make provision about the cases in which issuing an insurance policy is not to count towards discharging an obligation imposed on a relevant insurer by the regulations, including cases in which an insurance policy is not to count because of the content of its terms;
  - (e) make provision for allowing an insurance policy issued by another insurer to count towards the discharge of an obligation to issue a number of insurance policies imposed on a relevant insurer by the regulations;
  - (f) make provision about determining the number of registered premises for which a relevant insurer has issued insurance policies, including provision for varying, by reference to the risk band applicable to the particular registered premises, the extent to which insuring those premises counts in determining that number.
- (6) Provision under subsection (5)(a) may require an insurer, in determining the insurer’s share of insurance business of a prescribed description, to use information about that insurance business held by—
  - (a) the Secretary of State,
  - (b) a person acting on behalf of the Secretary of State, or
  - (c) the FCA.
- (7) Subsection (5)(e) is not to be taken as requiring a change in the person who is the insurer in relation to an insurance policy.

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- (8) Regulations under this section may include provision in respect of cases where an insurer has not provided such information as is required by regulations under section 72 including—
  - (a) provision for determining whether the insurer is a relevant insurer,
  - (b) provision for determining whether an exemption applies, and
  - (c) provision for determining what share of insurance business of a prescribed description the insurer is to be treated as having.
- (9) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (10) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

## **71 Target number**

- (1) The Secretary of State may, from time to time, by regulations prescribe a number to be a target number for the purposes of regulations under section 70.
- (2) A target number is the number of registered premises to be covered against a prescribed description of risk by insurance policies issued in a prescribed period by those relevant insurers upon whom obligations are imposed by regulations under section 70.
- (3) The regulations may prescribe different target numbers for different descriptions of risk.
- (4) The regulations may in particular provide for a target number to be expressed as a percentage of the number of registered premises.
- (5) The regulations may, at any one time, prescribe target numbers for two or more consecutive prescribed periods.
- (6) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

## **72 Information**

- (1) The Secretary of State may by regulations make provision about—
  - (a) the provision of information, and
  - (b) the production of documents,by insurers for the purposes of regulations under section 70.
- (2) The regulations may in particular require an insurer to provide information of a prescribed description or produce documents of a prescribed description for the purpose of showing, in relation to a prescribed period—
  - (a) whether or not an insurer is a relevant insurer;
  - (b) whether or not an exemption applies (see section 70(5)(b)).
- (3) The regulations may in particular require an insurer to provide information or produce documents about—
  - (a) the insurance policies issued by it in a prescribed period that provide cover against prescribed descriptions of risk;

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- (b) the value of the insurance policies so issued;
  - (c) insurance policies so issued that do not remain in force to the end of the period of cover;
  - (d) the value of such insurance policies.
- (4) The regulations may provide for information to be provided or documents to be produced to the Secretary of State or a person acting on behalf of the Secretary of State.
- (5) The regulations may make provision—
- (a) about the time within which information must be provided or documents produced;
  - (b) about the form in which information is to be provided;
  - (c) about the place where documents are to be produced;
  - (d) requiring information to be verified in a prescribed manner;
  - (e) requiring documents to be authenticated in a prescribed manner.
- (6) The regulations may make provision about—
- (a) the persons to whom, and the purposes for which, information supplied by an insurer may be disclosed;
  - (b) the publication of information by the Secretary of State about the amount of insurance business of a prescribed description done by insurers, taken together.
- (7) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

### **73 Section 72: further provision**

- (1) The Secretary of State may by regulations make provision for and in connection with enforcing compliance with obligations imposed by regulations under section 72.
- (2) The regulations may in particular include—
- (a) provision about the sanctions, including civil penalties, that may be imposed by the Secretary of State or a person acting on behalf of the Secretary of State for non-compliance with the obligations;
  - (b) provision about the procedure to be followed when imposing a sanction;
  - (c) provision about the recovery of costs incurred in connection with imposing a sanction up to the time of its imposition;
  - (d) provision enabling an appeal to the First-tier Tribunal against the imposition of a sanction or a requirement to pay costs.
- (3) Provision under subsection (2)(a) may in particular include—
- (a) provision for civil penalties of a fixed amount;
  - (b) provision for further amounts to be payable by way of civil penalty where an insurer continues to fail to comply with the obligation in question;
  - (c) provision about how a civil penalty or an amount of costs may be recovered.
- (4) Provision under subsection (2)(d) may include provision as to the grounds on which an appeal may be made.

#### **74 Register of premises subject to greater flood risk**

- (1) The Secretary of State may by regulations provide for the creation and maintenance of a register of household premises in the United Kingdom that are subject to greater flood risk for the purposes of regulations under section 70.
- (2) The regulations may provide for the levels of flood risk to which premises are subject to be divided into two or more bands (“risk bands”), and may prescribe the upper and lower limits of each band.
- (3) The regulations may provide for the register to specify the level of flood risk to which particular household premises are subject by specifying the risk band applicable to the premises.
- (4) The regulations may provide for premises of a description specified in the regulations to be excluded from the register, and the premises excluded may include in particular premises where construction is completed on or after a date specified in the regulations.
- (5) The regulations may—
  - (a) specify the information to be contained in the register;
  - (b) make provision about access to the information contained in the register;
  - (c) provide for the publication of the register in whole or in part;
  - (d) provide for the disclosure of information contained in the register;
  - (e) provide for notification if premises are entered in, or omitted from, the register.
- (6) Regulations made under subsection (5)(d) may provide for—
  - (a) the persons to whom information or any description of information contained in the register may be disclosed;
  - (b) the imposition of conditions on persons to whom information contained in the register is disclosed, including conditions limiting further disclosure;
  - (c) penalties for non-compliance with conditions imposed under paragraph (b).
- (7) The regulations may require applications for premises to be entered in the register to be made by or on behalf of a person who has the qualifying interest in the premises.
- (8) The regulations may provide for premises to be omitted from the register at the request of a person who has the qualifying interest in the premises.
- (9) Before making regulations under this section the Secretary of State must consult—
  - (a) the Welsh Ministers;
  - (b) the Scottish Ministers;
  - (c) the Department of Agriculture and Rural Development in Northern Ireland.

#### **75 Functions of relevant bodies**

- (1) Regulations under section 74 may provide for a relevant body to carry out functions in connection with—
  - (a) the creation and maintenance of the register;
  - (b) giving access to information contained in the register;
  - (c) publication of the register;
  - (d) disclosure of information contained in the register;
  - (e) notification when premises are entered in, or omitted from, the register.

- (2) The following are relevant bodies for the purposes of this Part—
  - (a) the Environment Agency;
  - (b) the Scottish Environment Protection Agency, in relation to Scotland;
  - (c) the Natural Resources Body for Wales, in relation to Wales;
  - (d) the Department of Agriculture and Rural Development in Northern Ireland, in relation to Northern Ireland.
- (3) The regulations may provide for the Environment Agency—
  - (a) to coordinate the carrying out of functions conferred or imposed under subsection (1);
  - (b) to promote consistency in the carrying out of those functions.
- (4) The regulations may—
  - (a) require the relevant bodies to cooperate with each other as regards the functions conferred or imposed on any of them under subsection (1);
  - (b) require the relevant bodies (other than the Environment Agency) to cooperate with the Environment Agency as regards the carrying out of functions conferred or imposed on the Environment Agency under subsection (3).
- (5) Regulations under section 74 may provide for the Commissioners for Her Majesty’s Revenue and Customs, or a person authorised by them, to disclose information held for council tax purposes by the Valuation Office to—
  - (a) the Environment Agency, or
  - (b) the Natural Resources Body for Wales,for use in identifying premises to be excluded from the register by reference to the date of completion of construction (see section 74(4)).
- (6) The regulations may include provision restricting the use or further disclosure of information disclosed under subsection (5).

## **76 Reviews and appeals**

- (1) Regulations under section 74 may make provision for a person with the qualifying interest in particular premises—
  - (a) to request a review of a decision by a relevant body that the premises are not eligible to be entered in the register;
  - (b) to appeal against a decision by a relevant body that the premises are not eligible to be entered in the register to—
    - (i) the sheriff, in relation to Scotland,
    - (ii) the Water Appeals Commission for Northern Ireland, in relation to Northern Ireland, or
    - (iii) the First-tier Tribunal, in any other case.
- (2) For “relevant body”, see section 75(2).

## **77 Expenses of relevant bodies**

- (1) The Secretary of State may, with the consent of the Treasury, by regulations provide for a levy to be payable to the Secretary of State by insurers of a description specified in the regulations.

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- (2) The regulations may—
  - (a) specify the rate of the levy or the method by which it is to be calculated;
  - (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.
- (3) The regulations may in particular make provision for determining the amount of the levy by reference to the qualifying expenses of the relevant bodies and the Secretary of State.
- (4) The regulations may make provision for amounts payable by way of levy under the regulations to be recoverable summarily (or in Scotland recoverable) as a civil debt.
- (5) Before making regulations under this section the Secretary of State must consult—
  - (a) the Welsh Ministers;
  - (b) the Scottish Ministers;
  - (c) the Department of Agriculture and Rural Development in Northern Ireland.
- (6) In this section “qualifying expenses” means—
  - (a) in relation to a relevant body, such proportion of the expenses of the relevant body as the Secretary of State considers reasonable having regard to the functions exercisable by that body under regulations under section 74;
  - (b) in relation to the Secretary of State, the expenses of the Secretary of State attributable to the exercise of functions conferred by or under this section.
- (7) For “relevant body”, see section 75(2).

## **78 Compliance reports**

- (1) The Secretary of State may by regulations make provision about reporting compliance with obligations imposed by regulations under section 70.
- (2) The regulations may require a relevant insurer to make a report—
  - (a) stating the extent to which it has complied with obligations imposed on it by regulations under section 70 in relation to a prescribed period;
  - (b) providing prescribed details about the basis on which it considers that it has complied with those obligations to that extent.
- (3) The regulations may provide for reports to be given to the FCA.
- (4) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

## **79 Functions of the FCA**

- (1) The Treasury may by regulations provide for the FCA to take action for monitoring and enforcing compliance with—
  - (a) such of the obligations imposed on relevant insurers by regulations under section 70 or 78 as may be specified in the regulations;
  - (b) such description of those obligations as may be specified in the regulations.
- (2) The regulations may provide for the FCA to take action for enforcing compliance with—

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- (a) such of the obligations imposed on insurers by regulations under section 72 as may be specified in the regulations;
  - (b) such description of those obligations as may be specified in the regulations.
- (3) Regulations under subsection (2) may only provide for the FCA to take action as regards cases where—
- (a) the failure to comply, if proved, would consist in or involve providing information that is not true or producing a document that is not correct, or
  - (b) measures available under section 73 have been taken without securing compliance.
- (4) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012, with or without modification.
- (5) The provisions of the Financial Services and Markets Act 2000 and the Financial Services Act 2012 referred to in subsection (4) include in particular—
- (a) provisions about gathering information and investigating, including provisions as to powers of entry and search;
  - (b) provisions as to criminal offences and disciplinary measures;
  - (c) provisions for the grant of an injunction in relation to a contravention or anticipated contravention;
  - (d) provisions giving the Treasury or the FCA powers to make subordinate legislation;
  - (e) provisions for the FCA to charge fees;
  - (f) provisions restricting liability in damages in relation to the discharge of functions of the FCA.
- (6) The regulations may make provision enabling the FCA, to such extent as the regulations may prescribe, to make arrangements for the performance of functions on its behalf.

## **80 Reports by the FCA**

- (1) The Treasury may by regulations provide for the FCA to prepare reports on its discharge of the functions conferred on it under section 79.
- (2) The regulations may—
- (a) make provision about the contents of the reports;
  - (b) make provision about the timing of the reports;
  - (c) provide for copies of the report to be given to the Secretary of State and such other persons as the regulations may specify;
  - (d) provide for publication of the reports.

## **81 Intervention by the FCA or the PRA**

- (1) The Treasury may by regulations confer on a regulator the power to disapply or modify, in relation to a relevant insurer, an obligation imposed by regulations under—
- (a) section 70 (flood insurance obligations),
  - (b) section 72 (information), or
  - (c) section 78 (compliance reports).

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- (2) In this section “the intervention power” means the power conferred by regulations under subsection (1).
- (3) The regulations may specify which obligations, or which descriptions of obligations, a regulator may disapply or modify under the intervention power.
- (4) The regulations may specify what modifications, or what descriptions of modifications, may be made by a regulator under the intervention power.
- (5) The regulations may specify the circumstances in which, and the conditions subject to which, a regulator may exercise the intervention power.
- (6) Provision under subsection (5) may in particular provide for a regulator to exercise the intervention power in relation to a relevant insurer—
  - (a) where the relevant insurer is failing, or is likely to fail, to satisfy the threshold conditions for which the regulator is responsible,
  - (b) in connection with advancing—
    - (i) if the regulator is the FCA, one or more of the FCA’s operational objectives, or
    - (ii) if the regulator is the PRA, one or more of the PRA’s objectives,
  - (c) in conjunction with the exercise by the regulator, in respect of the relevant insurer, of a power that is conferred on the regulator by or under an enactment and is specified in the regulations, or
  - (d) at the request of, or for the purpose of assisting, an overseas regulator of a kind specified in the regulations.
- (7) The regulations may—
  - (a) make provision about the procedure to be followed when exercising the intervention power, including provision about consulting such persons as may be specified in the regulations about a proposed exercise of the power;
  - (b) make provision requiring a regulator to give a relevant insurer notice in writing specifying how the intervention power has been exercised in relation to that relevant insurer;
  - (c) make provision about when an exercise of the intervention power takes effect;
  - (d) make provision about the period for which a provision of regulations may be disappplied or modified under the intervention power, including—
    - (i) provision enabling a regulator to specify the period for which a provision of regulations is disappplied or modified;
    - (ii) provision for disapplying or modifying a provision of regulations until a regulator provides for it to apply again or to apply again without modification;
  - (e) make provision requiring a regulator—
    - (i) to send copies of a notice under paragraph (b) to the Secretary of State and such other persons as may be specified in the regulations;
    - (ii) to notify such persons as may be specified in the regulations of the exercise of the intervention power;
  - (f) make provision requiring a regulator to publish such details about the exercise of the intervention power as may be specified in the regulations;
  - (g) make provision requiring a regulator to keep under review each case in which a provision of regulations is disappplied or modified;

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- (h) make provision about the matters to which a regulator is to have regard in exercising its functions under the regulations.
- (8) Provision under subsection (7)(e) or (f) may allow for the omission of information publication of which would in the opinion of the regulator be against the public interest.
- (9) The intervention power may be exercised in respect of an obligation imposed by regulations under section 70(1) only so as to disapply the obligation (and not so as to modify it).
- (10) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012, with or without modification.
- (11) The provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012 referred to in subsection (10) include in particular—
  - (a) provisions about gathering information and investigating, including provisions as to powers of entry and search;
  - (b) provisions as to criminal offences and disciplinary measures;
  - (c) provisions for the grant of an injunction in relation to a contravention or anticipated contravention;
  - (d) provisions giving the Treasury, the FCA or the PRA powers to make subordinate legislation;
  - (e) provisions for the FCA or the PRA to charge fees;
  - (f) provisions restricting liability in damages in relation to the discharge of functions of the FCA or the PRA.
- (12) In this section “regulator” means the FCA or the PRA.
- (13) For—
  - “objective of the PRA”, see section 2F of the Financial Services and Markets Act 2000;
  - “operational objective of the FCA”, see section 1B(3) of that Act;
  - “overseas regulator”, see section 55Q of that Act;
  - “threshold condition”, see section 55B of that Act.

### *General*

## **82 Interpretation**

- (1) In this Part “insurer” means—
  - (a) a person who—
    - (i) is authorised for the purposes of the Financial Services and Markets Act 2000 (see section 31 of that Act), and
    - (ii) has permission to carry on the activities specified in Article 10 of the Financial Services and Markets (Regulated Activities) Order 2001 (S.I. 2001/544), or
  - (b) a member of the Society (within the meaning of the Lloyd’s Act 1982).
- (2) The Secretary of State may by regulations amend the definition of “insurer” in subsection (1).

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- (3) The Secretary of State may by regulations define “relevant insurer” for the purposes of this Part.
- (4) Before making regulations under subsection (3) as to the meaning of “relevant insurer”, the Secretary of State must consult such persons as the Secretary of State thinks appropriate.
- (5) The Secretary of State may by regulations define for the purposes of sections 64 to 69—
  - “flood”;
  - “flood risk”;
  - “household premises”.
- (6) The Secretary of State may by regulations define for the purposes of sections 70 to 81—
  - “flood”;
  - “flood risk”;
  - “greater flood risk”;
  - “household premises”;
  - “insurance policy”;
  - “issue”, in relation to an insurance policy;
  - “the qualifying interest”, in relation to household premises.
- (7) Regulations under subsection (5) or (6) as to the meaning of “flood” may specify descriptions of water that are, or are not, to be taken into account.
- (8) In sections 70 to 81—
  - “the FCA” means the Financial Conduct Authority;
  - “the PRA” means the Prudential Regulation Authority;
  - “registered premises” means premises registered in the register maintained under section 74;
  - “risk band” has the meaning given by section 74(2).

### **83 Period of operation**

- (1) Sections 64 to 81 are repealed at the end of the period of 25 years beginning with the day on which this Act is passed.
- (2) The Secretary of State may by order amend subsection (1) so as to bring forward the day on which—
  - (a) sections 64 to 69 are repealed;
  - (b) sections 70 to 78 are repealed.
- (3) The Secretary of State may by order make provision in connection with—
  - (a) the repeal of—
    - (i) sections 64 to 69, or
    - (ii) sections 70 to 78, or
  - (b) the revocation of a scheme’s designation under section 64(1)(b) without a new designation being made under that provision, at any time before sections 64 to 69 are repealed,
 including provision amending or repealing an enactment.

- (4) Provision made in an order by virtue of subsection (3) may, in particular, include—
  - (a) such provision for the transfer of property, rights and liabilities (whether or not otherwise capable of being transferred, and including pension liabilities in respect of staff) relating to the FR Scheme as the Secretary of State thinks fit;
  - (b) provision about legal proceedings relating to anything done in connection with the FR Scheme;
  - (c) provision about the accounts of the FR Scheme;
  - (d) provision about information held by the FR Scheme administrator.
- (5) Before making an order under subsection (3)(a)(i) or (b) which includes provision for the transfer of an amount of the reserves of the FR Scheme, the Secretary of State must consult the FR Scheme administrator about the amount to be transferred.
- (6) The Secretary of State may by regulations define “reserves” for the purposes of subsection (5).
- (7) The Treasury may by order amend subsection (1) so as to bring forward the day on which sections 79 to 81 are repealed.
- (8) The Treasury may by order make provision in consequence of the repeal of sections 79 to 81, including provision amending or repealing an enactment.

#### **84 Regulations and orders**

- (1) A power to make regulations or an order under this Part is exercisable by statutory instrument.
- (2) Subsection (1) does not apply in relation to an order under section 83(3) if the only provision made by the order is provision for, or in connection with, the transfer of property, rights and liabilities.
- (3) A power to make regulations or an order under this Part includes power to make different provision for different purposes and different areas.
- (4) A power to make regulations or an order under this Part includes power to make incidental, supplementary, consequential, transitional or transitory provision or savings.
- (5) Subject to subsection (6), a statutory instrument containing regulations or an order made under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing—
  - (a) regulations under section 64 (the Flood Reinsurance Scheme),
  - (b) regulations under section 65 (scheme administrator),
  - (c) regulations under section 66 (scheme funding),
  - (d) regulations under section 67 (scheme administration),
  - (e) regulations under section 69 (disclosure of HMRC council tax information),
  - (f) regulations under section 70 (flood insurance obligations),
  - (g) the first regulations to be made under section 71 (target number),
  - (h) regulations under section 72 or 73 (information),
  - (i) the first regulations to be made under section 74 (register of premises subject to greater flood risk),

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- (j) regulations under section 77 (expenses of relevant bodies),
- (k) regulations under section 78 (compliance reports),
- (l) regulations under section 79 (functions of FCA),
- (m) regulations under section 81 (intervention by FCA or PRA),
- (n) regulations under section 82 (interpretation), or
- (o) an order under section 83 (period of operation),

may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

- (7) If a draft of an instrument containing an order under section 83(3) would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

## PART 5

### MISCELLANEOUS

#### **85 Internal drainage boards: procedure for orders confirming reorganisation**

- (1) Schedule 3 to the Land Drainage Act 1991 (procedure for certain orders) is amended as follows.
- (2) In paragraph 4 (publication of order after it is made and availability of special parliamentary procedure), after sub-paragraph (1) there is inserted—
- “(1A) But this paragraph does not apply to an order confirming a scheme under section 3 of this Act.”
- (3) In paragraph 5 (orders subject to special parliamentary procedure)—
- (a) in sub-paragraph (1), for “this Schedule” there is substituted “paragraph 4”;
  - (b) after sub-paragraph (3) there is inserted—
- “(3A) But sub-paragraph (3) does not apply to an order confirming a scheme under section 3 of this Act.”

#### **86 Internal drainage boards in England: alternative procedure for byelaws**

- (1) The Land Drainage Act 1991 is amended as follows.
- (2) In section 65 (land drainage regulations), at the beginning of subsection (2) there is inserted “Subject to section 66A(4),”.
- (3) In section 66 (powers of internal drainage boards and local authorities to make byelaws), after subsection (5) (procedure) there is inserted—
- “(5A) Subsection (5) is subject to section 66A(1).”
- (4) After section 66 there is inserted—

### **“66A Alternative procedure for byelaws made by internal drainage boards**

- (1) The Secretary of State may by regulations —
  - (a) provide that section 66(5) and Schedule 5 do not apply to byelaws made under section 66 by internal drainage boards for internal drainage districts which are neither wholly nor partly in Wales, and
  - (b) make provision about the procedure for the making and coming into force of such byelaws.
- (2) The regulations may, in particular, include provision about—
  - (a) consultation to be undertaken before a byelaw is made;
  - (b) publicising a byelaw after it is made.
- (3) The regulations may make such incidental, consequential, transitional or supplemental provision (including provision amending or repealing any provision of this Act) as the Secretary of State considers appropriate.
- (4) Regulations may not be made under subsection (1) unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.”

### **87 Publication requirements under the Land Drainage Act 1991**

Schedule 9 (amendments of the Land Drainage Act 1991 to remove certain restrictions on the way in which documents have to be published) has effect.

### **88 Sustainable drainage systems: non-performance bonds**

In Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage), in paragraph 12 (non-performance bonds), in sub-paragraph (4)(c)—

- (a) after “sums received” there is inserted “from a person”;
- (b) for “the developer” there is substituted “that person”.

### **89 Amendments relating to Regional Flood and Coastal Committees**

Schedule 10 (amendments relating to Regional Flood and Coastal Committees) has effect.

## **PART 6**

### **GENERAL AND FINAL**

### **90 Power to make consequential provision**

- (1) The Secretary of State may by order made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of this Act.
- (2) The power conferred by subsection (1) includes power—
  - (a) to make transitional, transitory or saving provision;

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

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- (b) to amend, repeal, revoke or otherwise modify any provision made by or under an enactment (whenever passed or made).
- (3) A statutory instrument containing (whether alone or with other provision) an order under this section which amends or repeals any provision of an Act of Parliament, or of an Act or Measure of the National Assembly for Wales, is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument containing any other order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **91 Transitional, transitory or saving provision**

- (1) The Secretary of State may by order made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.
- (2) Subsection (1) does not apply if or to the extent that subsection (3) or (4) applies.
- (3) If a provision of this Act is brought into force to any extent by the Welsh Ministers acting alone under section 94(3), the Welsh Ministers may by order made by statutory instrument make such transitional, transitory or saving provision as the Welsh Ministers consider appropriate in connection with the coming into force of so much of that provision as is so brought into force.
- (4) If a provision of this Act is brought into force to any extent by the Secretary of State and the Welsh Ministers acting jointly under section 94(3), the Secretary of State and the Welsh Ministers may, acting jointly, by order made by statutory instrument make such transitional, transitory or saving provision as they, together, consider appropriate in connection with the coming into force of so much of that provision as is so brought into force.
- (5) Schedule 11 (further provision about orders under this section) has effect.

## **92 Financial provisions**

There shall be paid out of money provided by Parliament—

- (a) expenditure incurred under or by virtue of this Act by the Secretary of State;
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

## **93 Extent**

- (1) This Act extends to England and Wales only, subject as follows.
- (2) Sections 61 and 62 and Schedule 8 extend also to Scotland, but only so far as required for the purposes of regulations applying as mentioned in section 61(11)(b).
- (3) Part 4 and this Part extend to England and Wales, Scotland and Northern Ireland.
- (4) An amendment or repeal made by this Act has the same extent as the enactment to which it relates.

## 94 Commencement

- (1) The following provisions of this Act come into force on the day on which it is passed—
  - (a) section 69, so far as relating to the power to disclose information under section 69(1)(a);
  - (b) section 90;
  - (c) section 91 and Schedule 11;
  - (d) sections 92 and 93;
  - (e) this section and Schedule 12;
  - (f) section 95.
- (2) The following provisions of this Act come into force at the end of the period of two months beginning with the day on which it is passed—
  - (a) section 3;
  - (b) section 13;
  - (c) section 15;
  - (d) section 21;
  - (e) section 22, so far as relating to water or sewerage undertakers whose areas are wholly or mainly in England;
  - (f) section 25(3);
  - (g) sections 26 to 28;
  - (h) section 33;
  - (i) section 34(1) and (2);
  - (j) sections 35 and 36;
  - (k) section 57;
  - (l) section 58;
  - (m) section 60;
  - (n) sections 61 and 62 and Schedule 8;
  - (o) section 63;
  - (p) sections 85 to 87;
  - (q) section 88;
  - (r) section 89 and Schedule 10;
  - (s) paragraph 8 of Schedule 7 (and section 56 so far as relating to paragraph 8);
  - (t) paragraph 107 of Schedule 7 (and section 56 so far as relating to paragraph 107).
- (3) The remaining provisions of this Act come into force on such day as the appropriate authority may by order appoint.
- (4) The power of the Secretary of State or the Welsh Ministers to make an order under subsection (3) is to be exercisable by statutory instrument.
- (5) Different days may be appointed for different purposes.
- (6) Except as stated in the table in Schedule 12, the appropriate authority for the purposes of subsection (3) is the Secretary of State.

## 95 Short title

This Act may be cited as the Water Act 2014.