



Environment Act 2021

2021 CHAPTER 30

PART 5

WATER

Regulation of water and sewerage undertakers

86 Water and sewerage undertakers in England: modifying appointments

- (1) Part 2 of the Water Industry Act 1991 (appointment and regulation of undertakers) is amended as follows.
- (2) After section 12 insert—

“Modification of appointment conditions: England

12A Modification by the Authority

- (1) This section and sections 12B to 12I apply in relation to a company appointed under this Chapter whose area is wholly or mainly in England.
- (2) The Authority may make modifications of the conditions of the company’s appointment under this Chapter.
- (3) Before making any modifications under this section, the Authority must give notice—
 - (a) stating that it proposes to make modifications,
 - (b) setting out the proposed modifications and their effect,
 - (c) stating the reasons why it proposes to make the modifications, and
 - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (4) That time must not be less than 42 days from the date of publication of the notice.

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- (5) A notice under subsection (3) must be given—
- (a) by publishing the notice in a way the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the modifications, and
 - (b) by sending a copy of it to—
 - (i) each company holding an appointment under this Chapter the conditions of which the Authority proposes to modify,
 - (ii) any other company holding an appointment under this Chapter, any water supply licensee and any sewerage licensee, whose interests the Authority considers are likely to be materially affected by the modifications,
 - (iii) the Secretary of State,
 - (iv) any person whose functions are or include representing those within sub-paragraph (i) or (ii) in respect of interests of theirs that the Authority considers are likely to be materially affected by the modifications, and
 - (v) the Consumer Council for Water.
- (6) The Authority must consider any representations which are duly made.
- (7) If, within the time specified under subsection (3)(d), the Secretary of State directs the Authority not to make a modification, the Authority must comply with the direction.
- (8) Subsections (9) to (11) apply where, having complied with subsections (3) to (6), the Authority decides to proceed with making modifications.
- (9) The Authority must—
- (a) publish the decision and the modifications in a way the Authority considers appropriate for bringing them to the attention of persons likely to be affected by the modifications,
 - (b) state the effect of the modifications,
 - (c) state how it has taken account of any representations duly made, and
 - (d) state the reason for any differences between the modifications and those set out in the notice under subsection (3).
- (10) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 2ZA).
- (11) The date specified may not be less than 56 days from publication of the decision to make the modification (except as provided in section 12B).

12B Modification of conditions of appointment: early effective date

- (1) The date specified by virtue of section 12A(10) in relation to a modification under that section may be less than 56 days from the publication of the decision to make the modification if—
- (a) the Authority considers it necessary or expedient for the modification to have effect before the 56 days expire, and
 - (b) the consultation condition is satisfied.

- (2) The consultation condition is that the notice under section 12A relating to the modification—
- (a) stated the date from which the Authority proposed that the modification should have effect,
 - (b) stated the Authority’s reasons for proposing that the modification should have effect from a date less than 56 days from the decision to modify, and
 - (c) explained why, in the Authority’s view, that would not have a material adverse effect on any person holding an appointment under this Chapter.

12C Modifications of conditions under section 12A: supplementary

- (1) This section applies where under section 12A the Authority modifies the conditions of any appointment under this Chapter.
- (2) The Authority may make such incidental or consequential modifications of the conditions of any appointments as it considers necessary or expedient.
- (3) The modification of a condition of an appointment has effect subject to the giving of a direction under paragraph 2 of Schedule 2ZA in relation to the decision to which the modification relates.

12D Appeal to the CMA

- (1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification under section 12A of a condition of an appointment under this Chapter.
- (2) An appeal may be brought under this section only by—
 - (a) a company holding an appointment under this Chapter the conditions of which the Authority has decided to modify,
 - (b) any other company holding an appointment under this Chapter, any water supply licensee or any sewerage licensee, whose interests are materially affected by the decision,
 - (c) a person whose functions are or include representing those within paragraph (a) or (b) in respect of interests of theirs which are materially affected by the decision, or
 - (d) the Consumer Council for Water.
- (3) The permission of the CMA is required for the bringing of an appeal under this section.
- (4) The CMA may refuse permission only on one of the following grounds—
 - (a) in relation to an appeal brought by a company, water supply licensee or sewerage licensee within subsection (2)(b), that the interests of the company or licensee are not materially affected by the decision;
 - (b) in relation to an appeal brought by a person within subsection (2)(c), that the interests of the person represented are not materially affected by the decision;
 - (c) in relation to any appeal, that the appeal is brought for reasons that are trivial or vexatious, or has no reasonable prospect of success.

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12E Procedure on appeal to CMA

- (1) Schedule 2ZA makes provision about the procedure for appeals under section 12D.
- (2) Except where specified otherwise in that Schedule, the functions of the CMA with respect to an appeal under section 12D are to be carried out by a group constituted for that purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

12F Determination by CMA of appeal

- (1) This section applies to an appeal brought under section 12D.
- (2) In determining an appeal, the CMA must have regard, to the same extent as is required of the Authority, to—
 - (a) the Authority's duties under section 2, and
 - (b) the Authority's strategic priorities and objectives as set out in a statement under section 2A.
- (3) In determining the appeal the CMA—
 - (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal, 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 reaching its decision had it had the opportunity of doing so.
- (4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
 - (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2),
 - (b) that the Authority failed to give appropriate weight to any matter mentioned in subsection (2),
 - (c) that the decision was based, wholly or partly, on an error of fact,
 - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 12A(9)(b),
 - (e) that the Authority did not follow the procedure required by sections 12A to 12C, or
 - (f) that the decision was otherwise wrong in law.
- (5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

12G CMA's powers on allowing an appeal

- (1) Where the CMA allows an appeal under section 12D to any extent, it must do one or both of the following—
 - (a) quash the decision (to the extent that the appeal is allowed);

- (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA.
- (2) A direction under subsection (1) must not require the Authority to do anything that it would not have power to do (apart from the direction).
- (3) The Authority must comply with a direction given to it under that subsection.

12H Time limits for CMA to determine an appeal

- (1) The CMA must determine an appeal within the period of 4 months beginning with the permission date, unless subsection (2) applies.
- (2) This subsection applies where—
 - (a) the CMA has received representations on the timing of the determination from a party to the appeal, and
 - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1).
- (3) Where subsection (2) applies, the CMA must determine an appeal within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (4) Where subsection (2) applies, the CMA must also—
 - (a) inform the parties to the appeal of the time limit for determining the appeal, and
 - (b) publish that time limit in a way it considers appropriate to bring it to the attention of any other persons likely to be affected by the determination.
- (5) References in this section to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with section 12D(3).
- (6) In this section and in section 12I any reference to a party to an appeal is to be read in accordance with Schedule 2ZA.

12I Determination of appeal by CMA: supplementary

- (1) A determination by the CMA on an appeal—
 - (a) must be contained in an order made by the CMA;
 - (b) must set out the reasons for the determination;
 - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
 - (d) must be notified by the CMA to the parties to the appeal;
 - (e) must be published by the CMA—
 - (i) as soon as reasonably practicable after the determination is made;
 - (ii) in a way the CMA considers appropriate to bring it to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The CMA may exclude from publication any information it is satisfied is—

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- (a) commercial information, the disclosure of which would, or in the CMA’s opinion might, significantly harm the legitimate business interests of an undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual, the disclosure of which would, or in the CMA’s opinion might, significantly harm the individual’s interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA under subsection (1)(a).
- (4) The steps must be taken—
- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
 - (b) in any other case, within a reasonable time.
- (5) Section 12C applies where a condition of a licence is modified in accordance with section 12G as it applies where a condition of a licence is modified under section 12A.”
- (3) For the italic heading before section 13 substitute—
- “Modification of appointment conditions: Wales”.*
- (4) In section 13 (modification by agreement), before subsection (1) insert—
- “(A1) This section and sections 14 to 16B apply in relation to a company appointed under this Chapter whose area is wholly or mainly in Wales.”
- (5) Before section 17 insert—
- “Modification of appointment conditions: England and Wales”.*
- (6) After Schedule 2 insert the Schedule set out in Schedule 13.
- (7) In paragraph 35(3) of Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (CMA Panels), in the definition of “specialist utility functions”, after paragraph (c) insert—
- “(ca) an appeal under section 12D of that Act;”.