

2005 No. 2714 (C. 109)

WATER

The Water Act 2003 (Commencement No. 5, Transitional Provisions and Savings) Order 2005

Made - - - - *29th September 2005*

The Secretary of State, in exercise of the powers conferred upon her by sections 104(6)(a) and 105(3) to (6) of the Water Act 2003^(a) and having consulted the National Assembly for Wales^(b), makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Water Act 2003 (Commencement No. 5, Transitional Provisions and Savings) Order 2005.

(2) In this Order—

“the Act” means the Water Act 2003;

“the Authority” means the Water Services Regulation Authority;

“the Council” means the Consumer Council for Water;

“customer service committee” means any committee maintained under section 28 of the WIA^(c); and

“the Director” means the Director General of Water Services.

(3) Unless the contrary intention appears, any reference in this Order to a section or Schedule is a reference to a section of or Schedule to the Act.

Provisions coming into force on 1st October 2005

2. The following provisions shall come into force on 1st October 2005—

(a) in section 35 (the Council)—

(i) subsection (1) in so far as it inserts into the WIA section 27A (establishment of the Council and committees) for all remaining purposes; and

(ii) subsections (2), (3) and (4);

(b) section 38 (forward work programmes and annual reports) for all remaining purposes;

(c) section 43 (general functions of the Council);

(d) section 44 (provision of information to the Council);

(a) 2003 c. 37.

(b) The power in section 105(3) to appoint a day on which provisions of the Water Act 2003 shall come into force is vested in the “appropriate authority”. The appropriate authority in relation to provisions of the Act for which a day is appointed by this Order is the Secretary of State after consulting “the Assembly” (the National Assembly for Wales: section 105(2)).

(c) “WIA” means the Water Industry Act 1991 (c. 56) (section 105(2) of the Act).

- (e) section 45 (provision of statistical information to consumers etc);
- (f) section 46 (consumer complaints);
- (g) section 47 (investigations by the Council);
- (h) section 56 (licensing of other water suppliers), but only in so far as it has application to paragraphs 1 and 2 of Schedule 4 and—
 - (i) in its application to paragraph 2, only in so far as that paragraph has effect for the purposes of inserting into the WIA sections 17K, 17M, 17P and 17Q; and
 - (ii) in its application to paragraph 1, only for the purpose of giving effect to paragraph 2 of that Schedule to the extent specified in sub-paragraph (i) above;
- (i) section 62 (water resources management plans) in so far as it has effect for all remaining purposes as respects the insertion into the WIA of section 37B;
- (j) section 63 (drought plans) for all remaining purposes;
- (k) in section 100 (devolution: Wales)—
 - (i) subsection (2)(a), (iii) to (vi), (viii) and (ix), (b)(vi) and (x) and (g) in so far as it relates to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article;
 - (ii) subsection (3) in so far as it relates to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article;
 - (iii) subsection (6) in so far as it relates to references to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article; and
 - (iv) subsection (7) in so far as it relates to subsection (6) (so far as brought into force by sub-paragraph (iii) above) or the amendments made by subsections (2) and (3) (so far as brought into force by sub-paragraphs (i) and (ii) above);
- (l) section 101(1) (minor and consequential amendments and repeals) in so far as it relates to the amendments made by the following provisions of Schedule 7—
 - (i) paragraphs 16, 17, 19 and 22;
 - (ii) in paragraph 18, sub-paragraph (a) in so far as it has effect for the purposes of inserting the entry relating to the Council;
 - (iii) in paragraphs 20 and 21—
 - (aa) sub-paragraph (2) in so far as it has effect for the purposes of inserting the entry relating to the Council and the regional committees of the Council;
 - (bb) sub-paragraph (3)(a); and
 - (cc) sub-paragraph (1) in so far as it relates to the provisions mentioned in paragraphs (aa) and (bb) above;
 - (iv) in paragraph 26—
 - (aa) sub-paragraph (2)(a)(i)(a) in so far as it has effect for the purposes of inserting the entry relating to the Council;
 - (bb) sub-paragraphs (2)(a)(ii), (2)(b)(ii) and (5); and
 - (cc) sub-paragraph (1) in so far as it relates to the provisions mentioned in paragraphs (aa) and (bb) above;
 - (v) in paragraph 27—
 - (aa) sub-paragraphs (3), (4), (6) and (7)(d);
 - (bb) sub-paragraph (5) for all remaining purposes; and
 - (cc) sub-paragraph (1) in so far as it relates to the provisions mentioned in paragraphs (aa) and (bb) above;
 - (vi) in paragraph 28—
 - (aa) sub-paragraph (3)(a)(i) and (iv) and (b)(ii); and

- (bb) sub-paragraph (1) in so far as it relates to the provisions mentioned in paragraph (aa) above; and
- (vii) in paragraph 29, sub-paragraph (2) and sub-paragraph (1) in so far as it relates to that sub-paragraph; and
- (m) section 101(2) in so far as it relates to the following repeals specified in Schedule 9—
 - (i) the repeals of sections 28, 30 and 194 of, and Schedule 4 to, the WIA;
 - (ii) the repeals in relation to the House of Commons Disqualification Act 1975(a) and the Northern Ireland Assembly Disqualification Act 1975(b) in so far as they relate to the Chairman of a customer service committee;
 - (iii) the repeal of Schedule 4, paragraph 6 to the Water Act 1989(c);
 - (iv) the repeal of Schedule 1, paragraphs 10, 28(a) and 29(a) to the Water Consolidation (Consequential Provisions) Act 1991(d); and
 - (v) the repeal in relation to the reference in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999(e) to section 28(4).

Provisions coming into force on 1st December 2005

- 3.** The following provisions shall come into force on 1st December 2005—
- (a) section 56 for all remaining purposes;
 - (b) in section 100 (devolution: Wales)—
 - (i) subsection (2)(a)(ii), (iv) and (ix), (b)(i), (ii), (iv), (v), (viii), (ix) and (x), (d), (e), (h), (i) and (j) in so far as it relates to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article;
 - (ii) subsection (6) in so far as it relates to references to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article; and
 - (iii) subsection (7) in so far as it relates to subsection (6) (so far as brought into force by sub-paragraph (ii) above) or the amendments made by subsection (2) (so far as brought into force by sub-paragraph (i) above);
 - (c) section 101(1) (minor and consequential amendments and repeals) in so far as it relates to the amendments made by Schedule 8 for all remaining purposes; and
 - (d) section 101(2) in so far as it relates to repeals specified in Schedule 9 in relation to Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 for all remaining purposes.

Provisions coming into force on 1st April 2006

- 4.** The following provisions shall come into force on 1st April 2006—
- (a) section 34 (the Authority) except in so far as subsection (2) gives effect to Schedule 1 for the purposes of inserting into the WIA paragraph 11 of Schedule 1A;
 - (b) section 35 (the Council) for all remaining purposes;
 - (c) in section 36 (transfer to the Authority and the Council of functions, property etc), subsections (1) and (2);
 - (d) section 52 (co-operation between water regulators);
 - (e) in section 100 (devolution: Wales)—

(a) 1975 c. 24.

(b) 1975 c. 25.

(c) 1989 c. 15.

(d) 1991 c. 60.

(e) S.I. 1999/672, amended by S.I. 2000/253, S.I. 2004/3044 and section 100 of the Act.

- (i) subsection (2)(a) for all remaining purposes;
- (ii) subsection (6) in so far as it relates to references to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article; and
- (iii) subsection (7) in so far as it relates to subsection (6) (so far as brought into force by sub-paragraph (ii) above) or the amendments made by subsection (2) (so far as brought into force by sub-paragraph (i) above);
- (f) section 101(1) (minor and consequential amendments and repeals) in so far as it relates to the amendments made by Part 2 of Schedule 7 for all remaining purposes; and
- (g) section 101(2) in so far as it relates to the following repeals specified in Schedule 9—
 - (i) the repeals of section 1 of, and Schedule 1 to, the WIA and the repeal in relation to section 219(1) of that Act;
 - (ii) repeal in relation to the Parliamentary Commissioner Act 1967(a);
 - (iii) the repeals in relation to the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975 in so far as they relate to the Director; and
 - (iv) the repeals of section 185(2)(a) of, and Schedule 3, paragraphs 6 and 7, and Schedule 25, paragraphs 68(2)(a) and 76(a) to, the Water Act 1989(b).

Transitional provisions, savings and revocation

5.—(1) The transitional provisions and savings in the Schedule to this Order shall have effect.

(2) Paragraph 2 (devolution: Wales) of Schedule 2 to the Water Act 2003 (Commencement No. 4, Transitional Provisions and Savings) Order 2005(c) shall be revoked.

(3) Paragraphs (1) and (2) shall come into force on 1st October 2005.

29th September 2005

Ben Bradshaw
Parliamentary Under Secretary of State,
Department for Environment, Food and Rural Affairs

(a) 1967 c. 13.
(b) 1989 c.15.
(c) S.I. 2005/968 (C. 43).

TRANSITIONAL PROVISIONS AND SAVINGS

First forward work programme of the Council

1. Section 192A of the WIA (forward work programmes) shall have effect in relation to the Council's first forward work programme as if—

- (a) the duty in subsection (1) to publish a forward work programme in relation to the financial year ending on 31st March 2006 and before the start of that financial year—
 - (i) were a duty on the Council to publish its first forward work programme before 1st April 2006 and in relation to the period beginning on the day after the date of its publication and ending on 31st March 2007 (so as to include the financial year ending on that date); and
 - (ii) included a duty on the Council to explain how its activities from 1st October 2005 to the date of publication relate to the projects which it plans to undertake from the date of publication to 31st March 2007;
- (b) the duty in subsection (3) were a duty on the Council to include an estimate of the overall expenditure which the Council expects it will have incurred during the 18 months ending on 31st March 2007 in the exercise of its functions; and
- (c) the duty in subsection (4) to give notice containing a draft of its first forward work programme before publishing that programme were a duty on the Council to give such notice before 1st January 2006.

Last reports of the customer service committees

2.—(1) If a customer service committee has not prepared and sent to the Director before 1st October 2005—

- (a) a report on its activities in relation to the period from 1st April 2005 to 30th September 2005, or
- (b) an annual report under section 194(2) of the WIA in relation to any earlier period,

the Council shall prepare and send such a report to the Director as soon as reasonably practicable on or after 1st October 2005.

(2) The Director shall publish any report sent to him by a customer service committee under section 194(2) of the WIA on its activities, and any report sent to him by the Council under sub-paragraph (1) on the activities of a customer service committee, in relation to—

- (a) the period from 1st April 2005 to 30th September 2005, or
- (b) any earlier period,

in such manner as he considers appropriate.

(3) Subsection (8) of section 192B of the WIA (annual and other reports) shall apply for the purposes of this paragraph and shall apply—

- (a) in relation to a report prepared by a customer service committee and published by the Director under sub-paragraph (2), as if for “making or preparing” there were substituted “publishing”; and
- (b) in relation to a report prepared by the Council under sub-paragraph (1), as if any reference to the Authority were a reference to the Council.

(4) For the purposes of this paragraph, from 1st April 2006, any reference to the Director shall have effect as if it were a reference to the Authority and “he” and “him” are to have effect as “it” in relation to the Authority.

Effect after 1st October 2005 of customer service committee complaints

3.—(1) Where, immediately before it was abolished, a customer service committee had a subsisting duty with respect to a complaint under section 29 of the WIA (duties of customer service committees) then, unless the complainant objects, that complaint shall be treated as referred to the Council by or on behalf of the complainant under section 29 of the WIA (consumer complaints) as substituted by section 46(1) of the Act.

(2) Where, before it was abolished, a customer service committee had referred a complaint to the Director under section 29 of the WIA then, unless the complainant objects, the Director shall—

- (a) treat that complaint as if it had been referred to him by the Council under section 29 of the WIA as substituted by section 46(1) of the Act;
- (b) continue to consider that complaint; and
- (c) take or continue to take such steps in consequence of his consideration of that complaint as he considers appropriate.

(3) Where, immediately before 1st October 2005, the Director had a subsisting duty with respect to a complaint made under subsection (3)(c) of section 30 of the WIA (duties of the Director with respect to complaints) then, unless the complainant objects, the Director shall—

- (a) continue to consider that complaint; and
- (b) take or continue to take such steps in consequence of his consideration of that complaint (including any step which could have been taken by a customer service committee had this Order not been made) as he considers appropriate.

(4) Where a complainant has made an objection under this paragraph, the duty on the Council or the Director under sub-paragraph (1), (2) or (3) with respect to his complaint shall cease to apply.

(5) For the purposes of this paragraph, from 1st April 2006, any reference to the Director shall have effect as if it were a reference to the Authority and “he”, “him” and cognate expressions, in relation to the Director, are to have effect as “it” (or the appropriate equivalent) in relation to the Authority.

First statement of accounts of the Council

4.—(1) In Schedule 3A to the WIA (the Council)(a), paragraph 9(1) (statement of accounts) shall have effect in relation to the Council’s first annual statement of accounts as if it were a duty on the Council to prepare, in respect of the year ending on 31st March 2006, a statement of accounts giving a true and fair view of the state of affairs and the combined income and expenditure of—

- (a) the Council;
- (b) the customer service committees;
- (c) the WaterVoice Council; and
- (d) the Director in respect of the employment of staff who, and the provision of services which, contribute to the maintenance of the customer service committees and the WaterVoice Council.

(2) For the purposes of—

- (a) sub-paragraph (1), “the WaterVoice Council” means those chairing the customer service committees meeting together as a non-statutory national body representing the interests of the consumers of water and sewerage services in England and Wales;
- (b) assisting the Council in the carrying out its duty under sub-paragraph (1), the Director shall give to the Council such documents, information and assistance as the Council requests or the Director considers would be appropriate for him to give to the Council without any such request; and

(a) Schedule 3A was inserted by section 35(2) of, and Schedule 2 to, the Act.

- (c) sub-paragraph (2)(b), from 1st April 2006, the reference to the Director shall have effect as if it were a reference to the Authority and “him” is to have effect as “it” in relation to the Authority.

Effect of certain water supply licensing provisions

5.—(1) Subject to sub-paragraph (2), sections 17K (water supply licences: modification references to Competition Commission), 17M (references under section 17K: powers of investigation), 17P (water supply licences: Commission’s power of veto following report) and 17Q (section 17P: supplementary) of the WIA shall have effect only for the purposes of enabling—

- (a) an order to be made under section 111(4) or (6) of the Enterprise Act 2002(a) as applied by sections 17M and 17Q of the WIA; and
- (b) a statement of policy to be prepared and published under section 116 of the Enterprise Act 2002 as applied by sections 17M and 17Q of the WIA.

(2) From 1st December 2005—

- (a) sections 17K and 17P of the WIA shall have effect for all purposes; and
- (b) subject to sub-paragraph (3), sections 17M and 17Q of the WIA shall have effect for the purposes of their application of sections 109 and 110(5), (7) and (10) of the Enterprise Act 2002.

(3) Sections 17M and 17Q of the WIA shall have effect for the purposes of their application of section 110(5) of the Enterprise Act 2002 as if the reference in that subsection to subsection (6) were omitted.

Effect of provisions in relation to water resources management plans

6. Section 37B of the WIA (water resources management plans: publication and representations) shall have effect only in so far as it is applied in relation to drought plans by section 39B(5) of the WIA(b).

Devolution: Wales

7. Section 100(6) (devolution: Wales) shall not have effect in relation to references to any Act generally except—

- (a) to the extent that any such Act has been amended by the Act as at the date of this Order; and
- (b) as from the dates specified in this Order in relation to the provisions in question, to the extent that any such Act has been amended by the Act by virtue of the provisions of this Order.

Effect of references to the Authority

8. Until 1st April 2006 any reference to the Authority in any provision of the WIA or the WRA(c) introduced or amended by the Act and by virtue of this Order shall have effect as if it were a reference to the Director.

(a) 2002 c. 40.

(b) Section 37B was inserted by section 62 of the Act and section 39B was inserted by section 63 of the Act.

(c) “WRA” means the Water Resources Act 1991 (c. 57) (section 105(2) of the Act).

First forward work programme of the Authority

9.—(1) The duty of the Director under section 192A of the WIA (forward work programmes)(a) to give notice of and to publish a forward work programme shall not apply in respect of the financial year ending on 31st March 2007.

(2) From 1st April 2006, section 192A of the WIA shall have effect in relation to the Authority's first forward work programme as if—

- (a) the duty in subsection (1) to publish a forward work programme in relation to the financial year ending on 31st March 2007 and before the start of that financial year –
 - (i) were a duty on the Authority to publish its first forward work programme before 1st July 2006 and in relation to the period beginning on the day after the date of its publication and ending on 31st March 2007; and
 - (ii) included a duty on the Authority to explain how its activities from 1st April 2006 to the date of publication relate to the projects which it plans to undertake from the date of publication to 31st March 2007; and
- (b) the duty in subsection (3) were a duty on the Authority to include an estimate of the overall expenditure which the Authority expects it will have incurred during the financial year ending on 31st March 2007 in the exercise of its functions.

Last annual report of the Director

10. After the abolition of the office of the Director, the duty to make an annual report under section 192B of the WIA (annual and other reports) in relation to the year ending on 31st March 2006(b) shall be performed by the Authority.

(a) Section 192A was inserted by section 38(1) of the Act. See in relation to section 192A, paragraphs 3 and 8 of the Schedule to S.I. 2004/2528 (C. 106).

(b) Section 192B was inserted by section 38(1) of the Act. See, in relation to section 192B, paragraphs 2 and 8 of the Schedule to S.I. 2004/2528 (C. 106).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 1st October 2005, 1st December 2005 and 1st April 2006 certain provisions of the Water Act 2003 (“the Act”), and makes transitional provision and savings in respect of some of those provisions.

The provisions of Part 2 of the Act brought into force on 1st October 2005 establish the Consumer Council for Water and abolish the customer service committees maintained under section 28 of the Water Industry Act 1991. They also enable the making of certain subordinate legislation to establish the new water supply licensing regime.

The provisions of Part 3 of the Act brought into force on 1st October 2005 require water undertakers to prepare and maintain drought plans.

The provisions of Part 2 of the Act brought into force on 1st December 2005 establish the water supply licensing regime.

The provisions of Part 2 of the Act brought into force on 1st April 2006 establish the Water Services Regulation Authority and abolish the office of the Director General of Water Services. They also require the Secretary of State, the National Assembly for Wales, the Water Services Regulation Authority, the Consumer Council for Water and the Environment Agency to make arrangements to facilitate co-operation between them in relation to water.

Transitional provisions and savings arising from the coming into force of certain provisions in Part 2 of the Act are made in the Schedule to this Order.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Water Act 2003 have been brought into force in England and Wales by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s. 6	1.4.2004 & 1.4.2005	2004/641 & 2005/968
s. 9	1.4.2004	2004/641
s. 10	1.4.2004 & 1.4.2005	2004/641 & 2005/968
s. 15	1.4.2004	2004/641
s. 16	1.4.2004 & 1.4.2005	2004/641 & 2005/968
s. 17	1.4.2005	2005/968
s. 18	1.4.2004	2004/641
s. 19 (partially)	1.4.2004	2004/641
s. 20	1.4.2004	2004/641
s. 24	1.4.2005	2004/641
s. 25 (partially)	1.4.2004	2004/641
s. 26	1.10.2004	2004/2528
s. 27	1.4.2004	2004/641
ss. 28 and 29	1.10.2004	2004/2528
s. 31	1.10.2004	2004/2528
s. 35 (partially)	1.8.2005	2005/968
s. 36 (partially) & Sch. 3 [‡]	1.4.2005	2005/968
s. 37	1.4.2004	2004/641
s. 38 (partially)	1.10.2004	2004/2528
ss. 39 to 42	1.4.2005	2005/968
s. 48	1.10.2004 & 1.4.2005	2004/2528 & 2005/968
ss. 49 and 50	1.10.2004	2004/2528
s. 51	1.4.2005	2005/968
s. 53*	1.4.2004	2004/641
ss. 54 and 55	1.10.2004	2004/2528
s. 56 & Sch. 4 (partially)	1.4.2004 & 1.8.2005	2004/641 & 2005/968
s. 57	1.4.2004	2004/641
s. 59	1.10.2004	2004/2528
ss. 60 and 61	1.4.2004	2004/641
s. 62 (partially)	1.10.2004	2004/2528
s. 63 (partially)	1.10.2004	2004/2528
ss. 64 and 65	1.4.2004	2004/641
s. 66 [†]	1.4.2004	2004/641
s. 67	1.4.2004	2004/910 (W. 93)
s. 68 [†]	1.4.2004	2004/641
s. 70	1.4.2005	2005/968
s. 71	1.4.2004	2004/641
s. 72	1.4.2004	2004/641
s. 74*	1.10.2004	2004/2528

s. 76 [†]	1.10.2004	2004/2528
s. 79	1.10.2004	2004/2528
ss. 82 to 84	1.4.2004	2004/641
s. 85* & Sch. 5 & 6	1.4.2004	2004/641
s. 87	1.10.2004	2004/2528
ss. 90 to 97	28.5.2004	2004/641
s. 99	28.5.2004	2004/641
s. 100 (partially)	17.3.2004, 1.4.2004, 28.5.2004, 1.10.2004, 1.4.2005 & 1.8.2005	2004/641, 2004/2528 & 2005/968
s. 101(1) & Sch. 7 (partially)	1.4.2004, 1.10.2004, 29.12.2004, 1.4.2005 & 1.8.2005	2004/641, 2004/2528 & 2005/968
s. 101(1) & Sch. 8 (partially)	1.4.2004 & 1.10.2004	2004/641 & 2004/2528
s. 101(2) & Sch. 9 (partially)	1.4.2004, 28.5.2004, 1.10.2004 & 1.4.2005	2004/641, 2004/2528 & 2005/968

* These provisions also extend partially to Scotland (section 105(9) of the Act) and were brought into force in Scotland by the same Order.

† These provisions also extend to Scotland (section 105(9) of the Act) and were brought into force in Scotland by the same Order.

‡ These provisions also extend to Scotland and Northern Ireland (section 105(8) of the Act) and were brought into force in Scotland and Northern Ireland by the same Order.

The following provisions of the Water Act 2003 have been brought into force in England by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s. 58 (partially)	18.2.2005	2005/344
s. 69	17.3.2004	2004/641
s. 75	1.4.2004	2004/641
ss. 77 and 78	1.10.2004	2004/2528
s. 80	1.10.2004	2004/2528
s. 81	1.4.2004	2004/641
s. 86 (partially)	1.10.2004	2004/2528
s. 101(1) & Sch. 7 (partially)	17.3.2004 & 1.10.2004	2004/641 & 2004/2528
s. 101(2) & Sch. 9 (partially)	17.3.2004	2004/641

The following provisions of the Act have been brought into force in Wales by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s. 69	1.4.2004	2004/910 (W.93)
s. 75	1.4.2004	2004/910 (W.93)
ss. 77 and 78	11.11.2004	2004/2916 (W.255)
ss. 80 and 81	11.11.2004	2004/2916 (W.255)
s. 86 (partially)	11.11.2004	2004/2916 (W.255)
s. 101(1) & Sch. 7 (partially)	1.4.2004 & 11.11.2004	2004/910 (W.93) & 2004/2916 (W.255)
s. 101(2) & Sch. 9 (partially)	1.4.2004 & 11.11.2004	2004/910 (W.93) & 2004/2916 (W.255)

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