



# Water Act 2003

## 2003 CHAPTER 37

### PART 2

#### NEW REGULATORY ARRANGEMENTS, ETC

#### *Objectives of regulation of water industry*

### **39 Objectives and duties under WIA**

- (1) Section 2 of the WIA (general duties with respect to water industry) is amended as follows.
- (2) In paragraph (a) of subsection (1), after “relevant undertakers” there is inserted “ and of licensed water suppliers ”.
- (3) For subsection (2) there is substituted—
  - “(2A) The Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—
    - (a) to further the consumer objective;
    - (b) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of England and Wales;
    - (c) to secure that companies holding appointments under Chapter 1 of Part 2 of this Act as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of those functions; and
    - (d) to secure that the activities authorised by the licence of a licensed water supplier and any statutory functions imposed on it in consequence of the licence are properly carried out.
  - (2B) The consumer objective mentioned in subsection (2A)(a) above is to protect the interests of consumers, wherever appropriate by promoting

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effective competition between persons engaged in, or in commercial activities connected with, the provision of water and sewerage services.

(2C) For the purposes of subsection (2A)(a) above the Secretary of State or, as the case may be, the Authority shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes;
- (d) individuals residing in rural areas; and
- (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are not eligible to be supplied by a licensed water supplier,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(2D) For the purposes of subsection (2C) above, premises are not eligible to be supplied by a licensed water supplier if—

- (a) they are household premises (as defined in section 17C below); or
- (b) the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D below is less than the quantity specified in that subsection.

(2E) The Secretary of State and the Authority may, in exercising any of the powers and performing any of the duties mentioned in subsection (1) above, have regard to—

- (a) any interests of consumers in relation to electricity conveyed by distribution systems (within the meaning of the Electricity Act 1989);
- (b) any interests of consumers in relation to gas conveyed through pipes (within the meaning of the Gas Act 1986);
- (c) any interests of consumers in relation to communications services and electronic communications apparatus (within the meaning of the Communications Act 2003),

which are affected by the exercise of that power or the performance of that duty.”

(4) For subsections (3) and (4) there is substituted—

“(3) Subject to subsection (2A) above, the Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—

- (a) to promote economy and efficiency on the part of companies holding an appointment under Chapter 1 of Part 2 of this Act in the carrying out of the functions of a relevant undertaker;
- (b) to secure that no undue preference is shown, and that there is no undue discrimination in the fixing by such companies of water and drainage charges;
- (c) to secure that consumers are protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (whenever made) of any of such a company’s protected land or of an interest or right in or over any of that land;

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- (d) to ensure that consumers are also protected as respects any activities of such a company which are not attributable to the exercise of functions of a relevant undertaker, or as respects any activities of any person appearing to the Secretary of State or (as the case may be) the Authority to be connected with the company, and in particular by ensuring—
- (i) that any transactions are carried out at arm's length;
  - (ii) that the company, in relation to the exercise of its functions as a relevant undertaker, maintains and presents accounts in a suitable form and manner;
  - (iii) that, if the person is a licensed water supplier, its licence does not authorise it to carry on any activities in the area of the company;
- (e) to contribute to the achievement of sustainable development.
- (4) In exercising any of the powers or performing any of the duties mentioned in subsection (1) above in accordance with the preceding provisions of this section, the Secretary of State and the Authority shall have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed).”
- (5) After subsection (5) there is inserted—
- “(5A) In this section—
- “consumers” includes both existing and future consumers; and
  - “the interests of consumers” means the interests of consumers in relation to—
- (a) the supply of water by means of a water undertaker's supply system to premises either by water undertakers or by licensed water suppliers acting in their capacity as such; and
  - (b) the provision of sewerage services by sewerage undertakers.”
- (6) In subsection (6), for paragraphs (a) and (b) there is substituted—
- “(a) subject to subsection (6A) below, the reference in subsection (1) above to the provisions of this Act relating to the regulation of relevant undertakers and of licensed water suppliers is a reference to the provisions contained in Part 2 of this Act (except section 27A, and Schedule 3A), or in any of sections 37A to 38, 39, 39B, 39C, 66B, 66D, 66F to 66H, 66K, 66L, 95, 96, 153, 181, 182, 192A, 192B, 195, 195A and 201 to 203 below;
  - (b) the reference in that subsection to the provisions relating to the financial conditions of requisitions is a reference to the provisions contained in sections 42, 43, 43A, 48, 51C, 99, 100 and 100A below; and”.
- (7) In subsection (6A), for “Subsections (2) to (4) above” there is substituted “ Subsections (2A) to (4) above and section 2A below ”.
- (8) In subsection (6B), for “subsections (2) to (4) above” there is substituted “ subsections (2A) to (4) above and section 2A below ”.
- (9) After subsection (6B) there is added—

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“(7) The duties imposed by subsections (2A) to (4) above and section 2A below do not affect the obligation of the Authority or, as the case may be, the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any [F1EU] obligation or otherwise).”

#### Textual Amendments

**F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), [arts. 3, 6](#) (with [art. 3\(2\)\(3\)4\(2\)6\(4\)6\(5\)](#))

#### Commencement Information

**II** S. 39 in force at 1.4.2005 by [S.I. 2005/968](#), [art. 2\(f\)](#)

## 40 Guidance to Authority on social and environmental matters

After section 2 of the WIA there is inserted—

### “2A Guidance on social and environmental matters

- (1) Guidance may be issued from time to time—
  - (a) by the Assembly, with respect to appointment areas which are wholly or mainly in Wales; and
  - (b) by the Secretary of State, with respect to other appointment areas, about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) In formulating guidance, the Secretary of State and the Assembly shall, where practicable, have regard to the costs and benefits which may be expected to result from the guidance.
- (3) The Authority shall, in exercising and performing the powers and duties mentioned in section 2(1) above (subject to section 2(6) above), have regard to any guidance issued under this section.
- (4) Before issuing guidance under this section the Secretary of State and the Assembly shall consult—
  - (a) the Authority;
  - (b) the Council;
  - (c) in the case of the Secretary of State, the Assembly and *vice versa*;
  - (d) relevant undertakers;
  - (e) licensed water suppliers; and
  - (f) such other persons as the Secretary of State or the Assembly considers it appropriate to consult in relation to the guidance.
- (5) A draft of any guidance proposed to be issued by the Secretary of State under this section shall be laid before each House of Parliament.
- (6) Guidance shall not be issued by the Secretary of State under this section until after the period of forty days beginning with—
  - (a) the day on which the draft is laid before each House of Parliament; or

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- (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.
- (7) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.
- (8) In reckoning any period of forty days for the purposes of subsection (6) or (7) above, no account shall be taken of any time during which—
  - (a) Parliament is dissolved or prorogued; or
  - (b) both Houses are adjourned for more than four days.
- (9) The Secretary of State and the Assembly shall arrange for any guidance issued by him or it under this section to be published in such manner as he or it considers appropriate.
- (10) In this section, an “appointment area” is an area for which an appointment is held under Chapter 1 of Part 2 of this Act.”

**Commencement Information**

**I2** S. 40 in force at 1.4.2005 by S.I. 2005/968, art. 2(g)

**41 Standards of performance in relation to water supply**

- (1) Section 39 of the WIA (procedure for making regulations relating to performance standards in connection with water supply) is amended as follows.
- (2) Before subsection (1) there is inserted—
  - “(A1) The Secretary of State may make regulations under section 38 above—
    - (a) on an application by the Authority, in accordance with subsections (1) to (3) below; or
    - (b) otherwise than on such an application, in accordance with subsections (4) to (8) below.”
- (3) In subsection (1)—
  - (a) for the words preceding paragraph (a), and paragraph (a), there is substituted “Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 38 above if—”,
  - (b) in paragraph (b), the “and” at the end of sub-paragraph (i) is omitted, and after sub-paragraph (ii) there is inserted—
    - “(iii) on the Council; and
    - (iv) on such other persons or bodies as the Secretary of State may consider appropriate;”,
  - (c) in paragraph (c)(ii), for “(b)(ii)” there is substituted “(b)”.
- (4) In subsection (2)—
  - (a) in paragraph (a), for “draft provisions proposed by the Director for inclusion in” there is substituted “the Authority’s proposals for the making of”,
  - (b) in paragraph (b), for “those provisions” there is substituted “the regulations”.
- (5) In subsection (3)—

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- (a) for “under section 38 above” there is substituted “ on an application by the Authority under this section ”,
  - (b) in paragraph (a), for “the provisions proposed by the Director in his application or those provisions” there is substituted “ those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority’s application or to those proposals ”,
  - (c) in paragraph (b), the “and” at the end of sub-paragraph (i) is omitted, and after sub-paragraph (ii) there is inserted “and
    - (iii) to any person or body on whom a copy of the Authority’s application was served under subsection (1)(b) above.”
- (6) After subsection (3) there is added—
- “(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 38 above only if he considers—
- (a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or
  - (b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.
- (5) Before making regulations under section 38 above by virtue of subsection (4) above, the Secretary of State shall—
- (a) give notice of his proposals;
  - (b) consider the results of the research carried out in accordance with subsection (7) below; and
  - (c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.
- (6) A notice under subsection (5)(a) above must—
- (a) summarise the Secretary of State’s reasons for his proposals;
  - (b) specify the water undertaker or undertakers in relation to which it is proposed the regulations should apply; and
  - (c) specify the period within which objections or representations with respect to the proposals may be made.
- (7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.
- (8) A notice under subsection (5)(a) above shall be given by serving a copy on—
- (a) the Authority;
  - (b) the Council;
  - (c) every water undertaker to which the regulations will apply;
  - (d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and
  - (e) such other persons or bodies as the Secretary of State may consider appropriate.”

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### Commencement Information

**I3** S. 41 in force at 1.4.2005 by S.I. 2005/968, art. 2(h)

## 42 Standards of performance in relation to sewerage services

- (1) Section 96 of the WIA (procedure for making regulations relating to performance standards in connection with sewerage services) is amended as follows.
- (2) Before subsection (1) there is inserted—
- “(A1) The Secretary of State may make regulations under section 95 above—
- (a) on an application by the Authority, in accordance with subsections (1) to (3) below; or
  - (b) otherwise than on such an application, in accordance with subsections (4) to (8) below.”
- (3) In subsection (1)—
- (a) for the words preceding paragraph (a), and paragraph (a), there is substituted “Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 95 above if—”,
  - (b) in paragraph (b), the “and” at the end of sub-paragraph (i) is omitted, and after sub-paragraph (ii) there is inserted—
    - “(iii) on the Council; and
    - (iv) on such other persons or bodies as the Secretary of State may consider appropriate;”,
  - (c) in paragraph (c)(ii), for “(b)(ii)” there is substituted “(b)”.
- (4) In subsection (2)—
- (a) in paragraph (a), for “draft provisions proposed by the Director for inclusion in” there is substituted “the Authority’s proposals for the making of”,
  - (b) in paragraph (b), for “those provisions” there is substituted “the regulations”.
- (5) In subsection (3)—
- (a) for “under section 95 above” there is substituted “on an application by the Authority under this section”,
  - (b) in paragraph (a), for “the provisions proposed by the Director in his application or those provisions” there is substituted “those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority’s application or to those proposals”,
  - (c) in paragraph (b), the “and” at the end of sub-paragraph (i) is omitted, and after sub-paragraph (ii) there is inserted “and
    - (iii) to any person or body on whom a copy of the Authority’s application was served under subsection (1)(b) above.”
- (6) After subsection (3) there is added—
- “(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 95 above only if he considers—

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- (a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or
  - (b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.
- (5) Before making regulations under section 95 above by virtue of subsection (4) above, the Secretary of State shall—
- (a) give notice of his proposals;
  - (b) consider the results of the research carried out in accordance with subsection (7) below; and
  - (c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.
- (6) A notice under subsection (5)(a) above must—
- (a) summarise the Secretary of State’s reasons for his proposals;
  - (b) specify the sewerage undertaker or undertakers in relation to which it is proposed the regulations should apply; and
  - (c) specify the period within which objections or representations with respect to the proposals may be made.
- (7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.
- (8) A notice under subsection (5)(a) above shall be given by serving a copy on—
- (a) the Authority;
  - (b) the Council;
  - (c) every sewerage undertaker to which the regulations will apply;
  - (d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and
  - (e) such other persons or bodies as the Secretary of State may consider appropriate.”

**Commencement Information**

**I4** S. 42 in force at 1.4.2005 by S.I. 2005/968, art. 2(h)



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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 52(9) inserted by [2014 c. 21 Sch. 7 para. 133\(3\)](#)