



Water Industry Act 1991

1991 CHAPTER 56

PART III

WATER SUPPLY

CHAPTER I

GENERAL DUTIES OF WATER UNDERTAKERS [F1ETC]

Textual Amendments

- F1** Word in Pt. 3 Ch. 1 heading inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 46](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

37 General duty to maintain water supply system etc.

- (1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—
- (a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and
 - (b) for maintaining, improving and extending the water undertaker's water mains and other pipes,
- as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.
- (2) The duty of a water undertaker under this section shall be enforceable under section 18 above—
- (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.

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- (3) The obligations imposed on a water undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 38 below and shall not be in any way qualified by any such provision.

Modifications etc. (not altering text)

- C1** S. 37 saved (01.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 19(2)**, 225(2).
C2 S. 37 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 10(1)** (with reg. 1(1)(c))

[^{F2}37A Water resources management plans: preparation and review

- (1) It shall be the duty of each water undertaker to prepare [^{F3}, publish] and maintain a water resources management plan.
- (2) A water resources management plan is a plan for how the water undertaker will manage and develop water resources so as to be able, and continue to be able, to meet its obligations under this Part.
- (3) A water resources management plan shall address in particular—
- (a) the water undertaker’s estimate of the quantities of water required to meet those obligations;
 - (b) the measures which the water undertaker intends to take or continue for the purpose set out in subsection (2) above (also taking into account for that purpose the introduction of water into the undertaker’s supply system by or on behalf of [^{F4}water supply licensees]);
 - (c) the likely sequence and timing for implementing those measures; and
 - (d) such other matters as the Secretary of State may specify in directions [^{F5}(and see also section 37AA).]
- (4) The procedure for preparing [^{F6}and publishing] a water resources management plan (including a revised plan) is set out in section 37B below.
- (5) Before each anniversary of the date when its plan (or revised plan) was last published, the water undertaker shall —
- (a) review its plan; and
 - (b) send a statement of the conclusions of its review to the Secretary of State.
- (6) The water undertaker shall prepare [^{F7}and publish] a revised plan in each of the following cases—
- (a) following conclusion of its annual review, if the review indicated a material change of circumstances;
 - (b) if directed to do so by the Secretary of State;
 - (c) in any event, not later than the end of the period of five years beginning with the date when the plan (or revised plan) was last published,
- and shall follow the procedure in section 37B below (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).

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- (7) The Secretary of State may give directions specifying—
- (a) the form which a water resources management plan must take;
 - (b) the planning period to which a water resources management plan must relate.
- (8) Before preparing its water resources management plan (including a revised plan), the water undertaker shall consult—
- (a) the Environment Agency^{F8}, if the plan (or revised plan) would affect water resources in England;]
 - ^{F9}(aa) [the NRBW, if the plan (or revised plan) would affect water resources in Wales;]
 - (b) the Authority;
 - (c) the Secretary of State; and
 - (d) any ^{F10}water supply licensee] which supplies water to premises in the undertaker’s area via the undertaker’s supply system.
- ^{F11}(9) Before giving a direction under subsection (6)(b), the Secretary of State shall consult—
- (a) the Environment Agency, if the revised plan would affect water resources in England, and
 - (b) the NRBW, if the revised plan would affect water resources in Wales.
- (9A) Before giving a direction under subsection (6)(b), the Welsh Ministers shall consult—
- (a) the NRBW, if the revised plan would affect water resources in Wales, and
 - (b) the Environment Agency, if the revised plan would affect water resources in England.]
- (10) In this section, in relation to a water resources management plan, “published” means published in accordance with section 37B(8)(a) below.

Textual Amendments

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\)](#), **ss. 62**, 105(3); [S.I. 2004/2528](#), **art. 2(j)** (with [art. 4](#)); [S.I. 2005/2714](#), **art. 2(i)** (with [Sch. paras. 6, 8](#)); [S.I. 2006/984](#), **art. 2(q)** (with [art. 3](#), [Sch.](#)); [S.I. 2007/1021](#), **art. 2(a)**
- F3** Word in s. 37A(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 28(2)(a)**, 94(2)(g)
- F4** Words in s. 37A(3)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 47(a)**; [S.I. 2016/465](#), **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F5** Words in s. 37A(3) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 27(2)**, 94(2)(g)
- F6** Words in s. 37A(4) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 28(2)(b)**, 94(2)(g)
- F7** Words in s. 37A(6) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 28(2)(c)**, 94(2)(g)
- F8** Words in s. 37A(8)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 229(2)(a)** (with [Sch. 7](#))
- F9** S. 37A(8)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 229(2)(b)** (with [Sch. 7](#))
- F10** Words in s. 37A(8)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 47(b)**; [S.I. 2016/465](#), **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F11** S. 37A(9)(9A) substituted for s. 37A(9) (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 229(3)** (with [Sch. 7](#))

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Modifications etc. (not altering text)

- C3** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672, Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\), ss. 100\(3\) \(7\), 105\(3\)](#); [S.I. 2004/2528, art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714, art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021, art. 2\(c\)](#))

[^{F12}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—
- “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.]

Textual Amendments

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\), ss. 62, 105\(3\)](#); [S.I. 2004/2528, art. 2\(j\)](#) (with [art. 4](#)); [S.I. 2005/2714, art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); [S.I. 2006/984, art. 2\(q\)](#) (with [art. 3, Sch.](#)); [S.I. 2007/1021, art. 2\(a\)](#))
- F12** S. 37AA inserted (14.7.2014) by [Water Act 2014 \(c. 21\), ss. 27\(3\), 94\(2\)\(g\)](#))

37B Water resources management plans: publication and representations

- (1) A water undertaker shall—
- (a) send a draft water resources management plan to the Secretary of State;

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- (b) state whether it appears to the undertaker that any information contained in that plan is or might be commercially confidential (as regards itself or another person); and
 - (c) give the Secretary of State the name of each such other person and his address for service of a notice under subsection (2)(a) below.
- (2) If the water undertaker states that it so appears in relation to any such information, the Secretary of State shall—
 - (a) if the person to whom or to whose business the information relates is not the water undertaker, give that person notice that the information is included in a draft water resources management plan and, unless subsection (10) below applies, is required to be published under this section; and
 - (b) give each person (including the water undertaker) to whom any such information relates a reasonable opportunity—
 - (i) of objecting to the publication of the information relating to him on the ground that it is commercially confidential; and
 - (ii) of making representations to the Secretary of State for the purpose of justifying any such objection,and shall determine, taking any objections and representations under paragraph (b) into account, whether the information is or is not commercially confidential.
- (3) A water undertaker shall—
 - (a) (subject to subsection (10) below) publish the draft water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it;
 - (b) publish with it a statement—
 - (i) whether any information has been excluded from the published draft plan by virtue of subsection (10) below and, if it has, the general nature of that information; and
 - (ii) that any person may make representations in writing about the plan to the Secretary of State before the end of a period specified in the statement; and
 - (c) send a copy of the published draft plan and accompanying statement to such persons (if any) as may be prescribed.
- (4) The Secretary of State shall send to the water undertaker a copy of any representations he receives following publication of the draft plan under subsection (3) above and shall give it a reasonable period of time within which to comment on the representations.
- (5) The Secretary of State may in regulations prescribe how such representations and any comments by the water undertaker on them are to be dealt with.
- (6) Regulations under subsection (5) above—
 - (a) may provide for the Secretary of State to cause an inquiry or other hearing to be held in connection with the draft water resources management plan; and
 - (b) if they do so provide, may provide for subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) to apply with prescribed modifications to such an inquiry or hearing as they apply to inquiries under that section.
- (7) The Secretary of State may direct a water undertaker that its water resources management plan must differ from the draft sent to him under subsection (1) above

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in ways specified in his direction, and (subject to subsection (9) below) it shall be the duty of the water undertaker to comply with the direction.

- (8) The water undertaker shall—
- (a) (subject to subsection (10) below) publish the water resources management plan in the prescribed way or, if no way is prescribed, in a way calculated to bring it to the attention of persons likely to be affected by it; and
 - (b) publish with it a statement whether any information has been excluded from the published plan by virtue of subsection (10) below and, if it has, the general nature of that information.
- (9) If the water undertaker considers that publishing a water resources management plan complying with a direction under subsection (7) above would mean including in the published plan any information (other than any information in relation to which the Secretary of State has already made a determination under subsection (2) above) which might be commercially confidential (as regards itself or another person)—
- (a) the water undertaker shall send the Secretary of State a notice saying so, and giving the Secretary of State the name of any such other person and his address for service of a notice under subsection (2)(a) above as applied by paragraph (b) below; and
 - (b) subsection (2) above shall apply in relation to that information as it applies in relation to the information referred to there;
- and the Secretary of State may either confirm his direction under subsection (7) above (which is to be treated as a new direction under subsection (7)) or revoke the previous such direction (or the previous one so treated) and give a new one.
- (10) The published version of a draft water resources management plan published under subsection (3)(a) above, and a water resources management plan published under subsection (8)(a) above, shall exclude any information which the Secretary of State—
- (a) has determined under subsection (2) above (or that subsection as applied by subsection (9) above) is commercially confidential; or
 - (b) directs the water undertaker to exclude on the ground that it appears to him that its publication would be contrary to the interests of national security.
- (11) Any steps to be taken by a water undertaker under this section shall be completed by such time or within such period as the Secretary of State may direct.

Textual Amendments

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\), ss. 62, 105\(3\)](#); [S.I. 2004/2528, art. 2\(j\)](#) (with [art. 4](#)); [S.I. 2005/2714, art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); [S.I. 2006/984, art. 2\(q\)](#) (with [art. 3, Sch.](#)); [S.I. 2007/1021, art. 2\(a\)](#)

Modifications etc. (not altering text)

- C4** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672, Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\), ss. 100\(3\) \(7\), 105\(3\)](#); [S.I. 2004/2528, art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714, art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021, art. 2\(c\)](#)

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37C Water resources management plans: provision of information

- (1) It shall be the duty of each [^{F13}water supply licensee] to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its water resources management plan.
- (2) In the event of any dispute between a water undertaker and a [^{F13}water supply licensee] as to the reasonableness of the water undertaker's request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.
- (3) For the purposes of paragraph (b) of section 37B(1) above, the water undertaker shall identify in its statement under that paragraph any information—
 - (a) provided by a [^{F13}water supply licensee] pursuant to subsection (1) above; and
 - (b) contained in the water undertaker's draft water resources management plan, which the [^{F13}water supply licensee] has (at the time of providing it to the water undertaker) specifically identified as being, in the [^{F14}water supply licensee's] opinion, commercially confidential.
- (4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.
- (5) In subsection (4) above—
 - (a) “unpublished information” means confidential information which—
 - (i) is provided to the water undertaker by a [^{F13}water supply licensee] under this section;
 - (ii) relates to the affairs of any individual or to any particular business; and
 - (iii) by virtue of section 37B above, is not published;
 - (b) “the other consolidation Acts” has the same meaning as in section 206 below.

Textual Amendments

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\), ss. 62, 105\(3\)](#); [S.I. 2004/2528, art. 2\(j\)](#) (with [art. 4](#)); [S.I. 2005/2714, art. 2\(i\)](#) (with [Sch. paras. 6, 8](#)); [S.I. 2006/984, art. 2\(q\)](#) (with [art. 3, Sch.](#)); [S.I. 2007/1021, art. 2\(a\)](#)
- F13** Words in s. 37C substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 48\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F14** Words in s. 37C(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 48\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

Modifications etc. (not altering text)

- C5** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672, Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\), ss. 100\(3\) \(7\), 105\(3\)](#); [S.I. 2004/2528, art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714, art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021, art. 2\(c\)](#))

37D Water resources management plans: supplementary

- (1) Directions given under section 37A [^{F15}, 37AA] or 37B above may be—

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- (a) general directions applying to all water undertakers; or
 - (b) directions applying only to one or more water undertakers specified in the directions,
- and shall be given by an instrument in writing.
- (2) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.
- (3) The duties of—
- (a) a water undertaker under sections 37A to 37C above and under this section; and
 - (b) a [^{F16}water supply licensee] under section 37C above,
- shall be enforceable by the Secretary of State under section 18 above.
- [The Minister may by order made by statutory instrument amend the period for the ^{F17}(4) 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.]]

Textual Amendments

- F2** Ss. 37A-37D inserted (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2006 for specified provisions and further purposes and 1.4.2007 otherwise) by [Water Act 2003 \(c. 37\)](#), **ss. 62**, 105(3); S.I. 2004/2528, **art. 2(j)** (with **art. 4**); S.I. 2005/2714, **art. 2(i)** (with **Sch. paras. 6, 8**); S.I. 2006/984, **art. 2(q)** (with **art. 3, Sch.**); S.I. 2007/1021, **art. 2(a)**
- F15** Word in s. 37D(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 27(4)**, 94(2)(g)
- F16** Words in s. 37D(3)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 49**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(k)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F17** S. 37D(4)-(9) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 28(3)**, 94(2)(g)

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Modifications etc. (not altering text)

- C6** Ss. 37A-37D modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672, Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\), ss. 100\(3\) \(7\), 105\(3\)](#); [S.I. 2004/2528, art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714, art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021, art. 2\(c\)](#))

38 Standards of performance in connection with water supply.

- (1) For the purpose-
- (a) of facilitating the determination of the extent to which breaches of the obligations imposed by the following provisions of this Part are to amount to breaches of the duty imposed by section 37 above; or
 - (b) of supplementing that duty by establishing overall standards of performance in relation to that duty,
- the Secretary of State may, in accordance with section 39 below, by regulations provide for contraventions of such requirements as may be prescribed to be treated for the purposes of this Act as breaches of that duty.
- (2) The Secretary of State may, in accordance with section 39 below, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in his opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) above may provide that if a water undertaker fails to meet a prescribed standard it shall pay such amount as may be prescribed to any person who is affected by the failure and is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2) above, regulations under that subsection may—
- (a) include in a standard of performance a requirement for a water undertaker, in prescribed circumstances, to inform a person of his rights by virtue of any such regulations;
 - (b) provide for any dispute under the regulations to be referred by either party to the dispute to the Director;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the Director's determination on such a reference to be enforceable in such manner as may be prescribed;
 - (d) prescribe circumstances in which a water undertaker is to be exempted from requirements of the regulations.
- ^{F18}[(5) Where the Director determines any dispute in accordance with regulations under this section he shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.]

Textual Amendments

- F18** S. 38(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para. 18](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 3, Sch. Pt.1](#)

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[^{F19}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—
 - (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.]

Textual Amendments

F19 S. 38ZA inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), ss. **29(1)**, 94(3); S.I. 2016/1007, art. 2(d)

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[38A ^{F20}**Information with respect to levels of performance.**

- (1) The Director shall from time to time collect information with respect to—
- (a) the compensation paid by water undertakers under regulations under section 38(2) above; ^{F21} ...
 - ^{F22}(aa) [the compensation paid by water supply licensees under regulations under section 38ZA(2); and]
 - (b) the levels of overall performance achieved by water undertakers [^{F23}or water supply licensees] in connection with the provision of water supplies.
- (2) At such times as the Director may direct, each water undertaker shall give the following information to the Director—
- (a) as respects each standard prescribed by regulations under section 38(2) above, the number of cases in which compensation was paid and the aggregate amount or value of that compensation; and
 - (b) as respects each standard established by regulations under section 38(1)(b) above, such information with respect to the level of performance achieved by the undertaker as may be so specified.

[At such times as the Authority may direct, each water supply licensee is to give the ^{F24}(2A) 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.]

[The requirements in subsections (2) and (2A) are enforceable by the Authority under ^{F25}(3) section 18.]

- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as it may appear to him expedient to give to customers or potential customers of water undertakers [^{F26}or water supply licensees].
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
 - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.]

Textual Amendments

- F20** S. 38A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.27](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F21** Word in s. 38A(1) repealed (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 29\(3\)\(a\), 94\(3\)](#); S.I. 2016/1007, art. 2(d)
- F22** S. 38A(aa) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 29\(3\)\(b\), 94\(3\)](#); S.I. 2016/1007, art. 2(d)

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- F23** Words in s. 38A(b) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 29(3)(c)**, 94(3); S.I. 2016/1007, art. 2(d)
- F24** S. 38A(2A) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 29(4)**, 94(3); S.I. 2016/1007, art. 2(d)
- F25** S. 38A(3) substituted (1.1.2015 for specified purposes, 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 29(5)**, 94(3); S.I. 2014/3320, art. 2(2)(a); S.I. 2016/1007, art. 2(d)
- F26** Words in s. 38A(4) inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 29(6)**, 94(3); S.I. 2016/1007, art. 2(d)

[^{F27}38B Publication of statistical information about complaints

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of water undertakers or [^{F28}water supply licensees] and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to water undertakers or [^{F29}water supply licensees] (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.]

Textual Amendments

- F27** S. 38B inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 45(1)**, 105(3); S.I. 2005/2714, **art. 2(e)** (with [Sch. para. 8](#))
- F28** Words in s. 38B(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 50(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F29** Words in s. 38B(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 50(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

39 Procedure for regulations under section 38.

- [^{F30}(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.]
- (1) [^{F31}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—
- ^{F32}(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—
 - (i) on every water undertaker specified in the application,^{F33} . . .
 - (ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;]
 - [^{F34}(iii) on the Council; and
 - (iv) on such other persons or bodies as the Secretary of State may consider appropriate;]

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- (c) such period as the Secretary of State considers appropriate has been allowed for the making—
 - (i) by the Director; and
 - (ii) by any affected water undertaker [^{F35}or person or body on whom a copy of the application has been served under paragraph [^{F36}(b)] above],
of representations or objections with respect to the Director’s proposals and any modifications proposed by the Secretary of State; and
 - (d) the Secretary of State has considered [^{F37}the summary mentioned in subsection (2)(bb) below,] the Director’s reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- ^{F38}[(1A) Before making an application to the Secretary of State under this section the Director 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 and consider the results.]
- (2) An application made by the Director to the Secretary of State complies with this subsection if it—
 - (a) sets out [^{F39}the Authority’s proposals for the making of] regulations under section 38 above;
 - (b) specifies the water undertaker or undertakers in relation to which it is proposed [^{F40}the regulations] should apply
 - ^{F41}[(bb) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;] ; and
 - (c) summarises the Director’s reasons for his proposals.
- (3) The Secretary of State shall not make any regulations [^{F42}on an application by the Authority under this section] except where—
 - (a) the only provisions of the regulations are [^{F43}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] with such modifications as the Secretary of State considers appropriate; and
 - (b) each of the modifications (if any) of the Director’s proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
 - (i) to the Director;^{F44} . . .
 - (ii) to any water undertaker appearing to the Secretary of State to be likely to be affected by the modifications [^{F45}and
 - (iii) to any person or body on whom a copy of the Authority’s application was served under subsection (1)(b) above.]
- ^{F46}(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.

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- (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.]

Textual Amendments

- F30** S. 39(A1) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(2)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F31** S. 39(1): words substituted (1.4.2005) for para. (a) and preceding words by virtue of [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F32** S. 39(1)(b) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 19(2)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F33** Word in s. 39(1)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(b)**, 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in [art. 4, Sch. 1, 2](#))
- F34** S. 39(1)(b)(iii)(iv) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F35** Words in s. 39(1)(c)(ii) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 19(3)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F36** Words in s. 39(1)(c)(ii) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F37** Words in s. 39(1)(d) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(2); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F38** S. 39(1A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(3); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

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- F39** Words in s. 39(2)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(4)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F40** Words in s. 39(2)(b) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(4)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F41** S. 39(2)(bb) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 26(4)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), [art. 3, Sch. Pt.I](#)
- F42** Words in s. 39(3) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(5)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F43** Words in s. 39(3)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(5)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F44** Word in s. 39(3)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(5)(c)**, 105(3), 101(2), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in [art. 4, Sch. 1, 2](#))
- F45** S. 39(3)(b)(iii) and preceding word inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(5)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))
- F46** S. 39(4)-(8) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(6)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4, Sch. 1, 2](#))

[^{F47}**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.]

Textual Amendments

- F47** S. 39ZA inserted (15.7.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 29(7)**, 94(3); S.I. 2015/1469, **art. 2(c)** (with [art. 5\(1\)\(5\)](#))

Modifications etc. (not altering text)

- C7** S. 39ZA(2)(a) modified (temp.) (1.7.2015) by [The Water Act 2014 \(Commencement No. 4 and Transitional Provisions\) Order 2015 \(S.I. 2015/1469\)](#), **art. 5(1)(5)**

[**39A** ^{F48}**Information to be given to customers about overall performance.**

- (1) Each water undertaker shall, in such form and manner and with such frequency as the Director may direct, take steps to inform its customers [^{F49}, and, if the direction

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so specifies, [^{F50}water supply licensees] using the undertaker's supply system for the purpose of supplying water to the premises of customers or those customers,] of—

- (a) the standards of overall performance established under section 38(1)(b) above which are applicable to that undertaker; and
- (b) that undertaker's level of performance as respects each of those standards.

[Each water supply licensee must, in such form and manner and with such frequency ^{F51}(1A) as the Authority may direct, take steps to inform the licensee's customers of—

- (a) the standards of overall performance established under section 38ZA(1) which are applicable to that licensee;
- (b) that licensee's level of performance as regards those standards.

(1B) The Authority may direct that the requirement in subsection (1A) is not to apply to such water supply licensees as may be specified in the direction.]

(2) In giving [^{F52}a direction under subsection (1) or (1A)] , the Director shall not specify a frequency of less than once in every period of twelve months.

[The [^{F54}water supply licensees] referred to in subsection (1) above shall, if the ^{F53}(2A) Authority so directs, pass on the information about the matters mentioned in that subsection to their customers.

(2B) In subsection (1) above, the reference to the water undertaker's supply system shall be construed in accordance with [^{F55}section 17B] above.]

(3) The duty of a water undertaker [^{F56}or [^{F57}water supply licensee]] to comply with this section shall be enforceable by the Director under section 18 above.]

Textual Amendments

- F48** S. 39A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 28; Competition and Service (Utilities) Act. 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F49** Words in s. 39A(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 13(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F50** Words in s. 39A(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 51(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(k) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F51** S. 39A(1A)(1B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 51(3)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(k) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F52** Words in s. 39A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 51(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(k) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F53** S. 39A(2A)(2B) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 13(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F54** Words in s. 39A(2A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 51(2)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(k) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F55** Words in s. 39A(2B) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 51(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(k) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F56** Words in s. 39A(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 13(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F57** Words in s. 39A(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 51(6)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(k) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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[^{F58}39B Drought plans: preparation and review

- (1) It shall be the duty of each water undertaker to prepare [^{F59}, publish] and maintain a drought plan.
- (2) A drought plan is a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders or drought permits under Chapter 3 of Part 2 of the Water Resources Act 1991.
- (3) The duties referred to in subsection (2) above include in particular those imposed under or by virtue of—
 - (a) section 37 above;
 - (b) sections 67 to 69 below.
- (4) A drought plan shall address, in particular, the following matters—
 - (a) what measures the water undertaker might need to take to restrain the demand for water within its area;
 - (b) what measures the water undertaker might need to take to obtain extra water from other sources (also taking into account for that purpose the introduction of water into the undertaker's supply system by or on behalf of [^{F60}water supply licensees]);
 - (c) how the water undertaker will monitor the effects of the drought and of the measures taken under the drought plan;
 - (d) such other matters as the Secretary of State may specify in directions.
- (5) Section 37B above (water resources management plans: publication and representations), including any power in that section to make regulations or give directions, applies in relation to drought plans (including revised plans) as it applies in relation to water resources management plans.
- (6) Each water undertaker shall review (or further review) its drought plan and prepare [^{F61}and publish] a revised plan in each of the following cases—
 - (a) if there is a material change of circumstances;
 - (b) if directed to do so by the Secretary of State;
 - (c) in any event, not later than the end of the period of [^{F62}five years] beginning with the date when the plan (or revised plan) was last published in accordance with section 37B(8)(a) above as applied by subsection (5) above,and shall follow the procedure in section 37B above as applied by subsection (5) above (whether or not the revised plan prepared by the undertaker includes any proposed alterations to the previous plan).
- (7) Before preparing its drought plan (including a revised plan), the water undertaker shall consult—
 - (a) the Environment Agency [^{F63}, if the plan (or revised plan) would affect water resources in England;]
 - [^{F64}(aa) the NRBW, if the plan (or revised plan) would affect water resources in Wales;]
 - (b) the Authority;
 - (c) the Secretary of State; and
 - (d) any [^{F65}water supply licensee] which supplies water to premises in the undertaker's area via the undertaker's supply system.

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- (8) The Secretary of State may give directions specifying the form which a drought plan must take.
- (9) Directions given under this section (including directions given under section 37B above as applied by subsection (5) above) may be—
- (a) general directions applying to all water undertakers; or
 - (b) directions applying only to one or more water undertakers specified in the directions,
- and shall be given by an instrument in writing.
- (10) It shall be the duty of each water undertaker to whom directions apply to comply with the directions.
- [^{F66}(11) Before giving a direction under subsection (6)(b), the Secretary of State shall consult—
- (a) the Environment Agency, if the revised plan would affect water resources in England, and
 - (b) the NRBW, if the revised plan would affect water resources in Wales.
- (11A) Before giving a direction under subsection (6)(b), the Welsh Ministers shall consult—
- (a) the NRBW, if the revised plan would affect water resources in Wales, and
 - (b) the Environment Agency, if the revised plan would affect water resources in England.]

(12) The duty of a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.

Textual Amendments

- F58** Ss. 39B, 39C inserted (1.10.2004 for specified purposes and otherwise 1.10.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 63](#), 105(3); [S.I. 2004/2528](#), [art. 2\(j\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(j\)](#) (with [Sch. 2 para. 8](#))
- F59** Word in s. 39B(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(a\)](#), 94(2)(g)
- F60** Words in s. 39B(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 52\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F61** Words in s. 39B(6) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(b\)\(i\)](#), 94(2)(g)
- F62** Words in s. 39B(6)(c) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 28\(4\)\(b\)\(ii\)](#), 94(2)(g)
- F63** Words in s. 39B(7)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(2\)\(a\)](#) (with [Sch. 7](#))
- F64** S. 39B(7)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(2\)\(b\)](#) (with [Sch. 7](#))
- F65** Words in s. 39B(7)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 52\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))
- F66** S. 39B(11)(11A) substituted for s. 39B(11) (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 230\(3\)](#) (with [Sch. 7](#))

Modifications etc. (not altering text)

- C8** S. 39B modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by [S.I. 1999/672](#), [Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\)](#), [ss. 100\(3\)\(7\)](#), 105(3); [S.I. 2004/2528](#), [art. 2\(s\)](#) (with savings in [art. 4](#)); [S.I. 2005/2714](#), [art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); [S.I. 2007/1021](#), [art. 2\(c\)](#))

Changes to legislation: Water Industry Act 1991, chapter I is up to date with all changes known to be in force on or before 26 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

39C Drought plans: provision of information

- (1) It shall be the duty of each [^{F67}water supply licensee] to provide the water undertaker with such information as the water undertaker may reasonably request for the purposes of preparing or revising its drought plan.
- (2) In the event of any dispute between a water undertaker and a [^{F67}water supply licensee] as to the reasonableness of the water undertaker's request under subsection (1) above, either party may refer the matter for determination by the Secretary of State, and any such determination shall be final.
- (3) For the purposes of paragraph (b) of section 37B(1) above as applied by section 39B(5) above, the water undertaker shall identify in its statement under that paragraph any information—
 - (a) provided by a [^{F67}water supply licensee] pursuant to subsection (1) above; and
 - (b) contained in the water undertaker's draft drought plan,which the [^{F67}water supply licensee] has (at the time of providing it to the water undertaker) specifically identified as being, in the [^{F68}water supply licensee's] opinion, commercially confidential.
- (4) The water undertaker shall not use any unpublished information save for the purpose of facilitating the performance by it of any of the duties imposed on it by or under this Act, any of the other consolidation Acts or the Water Act 1989.
- (5) In subsection (4) above—
 - (a) “unpublished information” means confidential information which—
 - (i) is provided to the water undertaker by a [^{F67}water supply licensee] under this section;
 - (ii) relates to the affairs of any individual or to any particular business; and
 - (iii) by virtue of section 37B above as applied by section 39B(5) above, is not published;
 - (b) “the other consolidation Acts” has the same meaning as in section 206 below.
- (6) The duties of a [^{F67}water supply licensee] and a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.]

Textual Amendments

- F58** Ss. 39B, 39C inserted (1.10.2004 for specified purposes and otherwise 1.10.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 63](#), [105\(3\)](#); S.I. 2004/2528, [art. 2\(j\)](#) (with savings in [art. 4](#)); S.I. 2005/2714, [art. 2\(j\)](#) (with [Sch. 2 para. 8](#))
- F67** Words in s. 39C substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 53\(a\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F68** Words in s. 39C(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 53\(b\)](#); S.I. 2016/465, [art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

Modifications etc. (not altering text)

- C9** S. 39C modified (1.10.2004 for specified purposes and 1.10.2005 for further specified purposes and 1.4.2007 otherwise) by S.I. 1999/672, [Sch. 2](#) (as amended by [Water Act 2003 \(c. 37\)](#), [ss. 100\(3\)\(7\)](#), [105\(3\)](#); S.I. 2004/2528, [art. 2\(s\)](#) (with savings in [art. 4](#)); S.I. 2005/2714, [art. 2\(k\)](#) (with [Sch. 2 para. 8](#)); S.I. 2007/1021, [art. 2\(c\)](#))

Changes to legislation: *Water Industry Act 1991, chapter I is up to date with all changes known to be in force on or before 26 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[^{F69}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.]

Textual Amendments

F69 S. 39D inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), ss. **28(5)**, 94(2)(g)

Changes to legislation:

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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):

- Pt. 3 Ch. 2B inserted by [2014 c. 21 s. 12](#)
- s. 17(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(4)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17A(c) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(d) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(2)(ba) and word inserted by [2014 c. 21 Sch. 5 para. 4\(2\)\(b\)](#)
- s. 17R(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(7)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17AA(1)(ba)(bb) inserted by [2014 c. 21 Sch. 5 para. 5\(2\)](#)
- s. 17BA(5A) inserted by [2014 c. 21 Sch. 5 para. 7\(3\)](#)
- s. 17HA(9)(b)(ia) inserted by [2014 c. 21 Sch. 5 para. 16\(2\)](#)
- s. 23(2AA) inserted by [2014 c. 21 Sch. 7 para. 35\(4\)](#)
- s. 23(8)(9) inserted by [2014 c. 21 Sch. 7 para. 35\(10\)](#)
- s. 39E-39H inserted by [2021 c. 30 s. 78\(7\)](#)
- s. 87(7C)-(7F) inserted by [2012 c. 7 s. 35\(6\)](#)
- s. 94A-94E inserted by [2021 c. 30 s. 79](#)
- s. 95ZA(6) inserted by [2014 c. 21 Sch. 5 para. 39\(4\)](#)
- s. 96ZA(2)-(5) substituted for s. 96ZA(2) by [2014 c. 21 Sch. 5 para. 40](#)
- s. 106B(3A) inserted by [2014 c. 21 Sch. 7 para. 94](#)
- s. 117G(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(2\)](#)
- s. 117G(4)-(4D) substituted for s. 117(4) by [2014 c. 21 Sch. 5 para. 41\(3\)](#)
- s. 117G(6)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(4\)](#)
- s. 117K(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(2\)](#)
- s. 117K(5)(5A) substituted for s. 117(5) by [2014 c. 21 Sch. 5 para. 42\(3\)](#)
- s. 117L(9) inserted by [2014 c. 21 Sch. 5 para. 43\(3\)](#)
- s. 117N(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(2\)](#)
- s. 117N(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(3\)](#)
- s. 117N(11)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(4\)](#)
- s. 117O(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(2\)](#)
- s. 117O(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(3\)](#)
- s. 117S(7)-(9) inserted by [2014 c. 21 Sch. 5 para. 49](#)
- s. 119(2)(ab) inserted by [2003 c. 37 s. 89\(1\)\(a\)](#)
- s. 119(3) inserted by [2003 c. 37 s. 89\(1\)\(b\)](#)
- s. 121(1)(ba) inserted by [2003 c. 37 s. 89\(2\)\(a\)](#)
- s. 141DC inserted by [2021 c. 30 s. 83](#)
- s. 177K(7)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(4\)](#)
- s. 207D and cross-heading inserted by [2014 c. 21 s. 39](#)
- s. 207D(5) word repealed by [2014 c. 21 Sch. 5 para. 52\(a\)](#)
- s. 207D(5) words inserted by [2014 c. 21 Sch. 5 para. 52\(b\)](#)
- s. 213(1ZA) inserted by [2014 c. 21 Sch. 7 para. 119\(3\)](#)

– s. 213(1ZA) repealed by [2014 c. 21 Sch. 5 para. 53](#)