Up to date as of 31st March 2015.

Water Industry Act 1991

1991 CHAPTER 56

An Act to consolidate enactments relating to the supply of water and the provision of sewerage services, with amendments to give effect to recommendations of the Law Commission

[25th July 1991]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:–

Part I
Preliminary

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 34(4), 101(2), Sch 9, Pt 2.

Date in force: 1 April 2006: see SI 2005/2714, art 4(a), (g)(i); for savings see art 5(1), Schedule, para 8 thereto.

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NOTES

Amendment

Repealed by the Water Act 2003, ss 34(4), 101(2), Sch 9, Pt 2.

Date in force: 1 April 2006: see SI 2005/2714, art 4(a), (g)(i); for savings see art 5(1), Schedule, para 8 thereto.

[Water Services Regulation Authority]

NOTES

Amendment

Inserted by virtue of the Water Act 2003, s 34(1).

Date in force: 1 April 2006: see SI 2005/2714, art 4(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[1A Water Services Regulation Authority]

[(1) There shall be a body corporate to be known as the Water Services Regulation Authority (in this Act referred to as "the Authority") for the purpose of carrying out the functions conferred on or transferred to it by this Act or under or by virtue of any other enactment.

(2) The functions of the Authority are performed on behalf of the Crown.

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(3) Schedule 1A to this Act shall have effect with respect to the Authority.

(4) In Welsh the Authority may be known as “Awdurdod Rheoleiddio Gwasanaethau Dwr”.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 34(1).

Date in force: 1 April 2006: see SI 2005/2714, art 4(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

General duties

2 General duties with respect to water industry

(1) This section shall have effect for imposing duties on the Secretary of State and on [the Authority] as to when and how they should exercise and perform the following powers and duties, that is to say—

(a) in the case of the Secretary of State, the powers and duties conferred or imposed on him by virtue of the provisions of this Act relating to the regulation of relevant undertakers [and of licensed water suppliers]; and

(b) in the case of [the Authority], the powers and duties conferred or imposed on [it] by virtue of any of those provisions, by the provisions relating to the financial conditions of requisitions or by the provisions relating to the movement of certain pipes.

[(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[; and

(e) to further the resilience objective].

(2B) The consumer objective mentioned in subsection (2A)(a) above is to protect the interests of consumers, wherever appropriate by promoting 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;

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(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.

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

(a) to secure the long-term resilience of water undertakers' supply systems and sewerage undertakers' sewerage systems as regards environmental pressures, population growth and changes in consumer behaviour, and

(b) to secure that undertakers take steps for the purpose of enabling them to meet, in the long term, the need for the supply of water and the provision of sewerage services to consumers,

including by promoting—

(i) appropriate long-term planning and investment by relevant undertakers, and

(ii) the taking by them of a range of measures to manage water resources in sustainable ways, and to increase efficiency in the use of water and reduce demand for water so as to reduce pressure on water resources.

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

(a) the reference to water undertakers' supply systems is to be construed in accordance with section 17B;

(b) the reference to sewerage undertakers' sewerage systems is a reference to the systems comprising—

(i) the systems of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that undertakers are required to provide by section 94, and

(ii) the lateral drains that undertakers are required to maintain by section 94.]

(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

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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.]

[(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;

[(ba) to secure that no undue preference (including for itself) is shown, and that there is no undue discrimination, in the doing by such a company of—

(i) such things as relate to the provision of services by itself or another such company, or

(ii) such things as relate to the provision of services by a water supply licensee or a sewerage licensee;]

(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;

(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) . . .

(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) In this section the references to water and drainage charges are references to—

(a) any charges in respect of any services provided in the course of the carrying out of the functions of a relevant undertaker; and

(b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any of its customers or potential customers to pay.

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[(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) For the purposes of this section—

[(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]

(c) the reference in that subsection to the provisions relating to the movement of certain pipes is a reference to the provisions of section 185 below.

[(6A) [Subsections (2A) to (4) above and section 2A below] do not apply in relation to anything done by [the Authority] in the exercise of functions assigned to [it] by section 31(3) below ("Competition Act functions").

(6B) [The Authority] may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of [subsections (2A) to (4) above and section 2A below], if it is a matter to which [the CMA] could have regard when exercising that function.]

[(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 [EU] obligation or otherwise).]

NOTES

Derivation

Sub-ss (1), (2), (4) derived from the Water Act 1989, s 7(1), (2), (4); sub-ss (3), (5) derived from the Water Act 1989, s 7(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "the Authority" in square brackets in both places they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art

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5(1), Schedule, para 8 thereto.

Sub-s (1): in para (a) words “and of licensed water suppliers” in square brackets inserted by the Water Act 2003, s 39(1), (2).

Date in force: 1 April 2005: see SI 2005/968, art 2(f); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): in para (b) word “it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (2A)–(2E): substituted, for sub-s (2) as originally enacted, by the Water Act 2003, s 39(1), (3).

Date in force: 1 April 2005: see SI 2005/968, art 2(f); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (2A): in para (c) word “and” in italics repealed by the Water Act 2014, s 22(1), (2)(a).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 14 July 2014: see the Water Act 2014, s 94(2)(e).

Date in force (for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

Sub-s (2A): para (e) and word “; and” immediately preceding it inserted by the Water Act 2014, s 22(1), (2)(b).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 14 July 2014: see the Water Act 2014, s 94(2)(e).

Date in force (for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

Sub-ss (2DA), (2DB): inserted by the Water Act 2014, s 22(1), (3).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 14 July 2014: see the Water Act 2014, s 94(2)(e).

Date in force (for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

Sub-ss (3), (4): substituted by the Water Act 2003, s 39(1), (4).

Date in force: 1 April 2005: see SI 2005/968, art 2(f); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (3): para (ba) inserted by the Water Act 2014, s 23.

Date in force (for certain purposes): 1 January 2015: see SI 2014/3320, art 2(1)(a); for transitional provisions see art 3.

Date in force (in relation to England for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

Sub-s (3): para (d)(iii) repealed by the Enterprise and Regulatory Reform Act 2013, s 73, Sch 21, Pt 2, para 4.

Date in force: 25 June 2013: see the Enterprise and Regulatory Reform Act 2013, s 103(2)(g).

Sub-s (5A): inserted by the Water Act 2003, s 39(1), (5).

Date in force: 1 April 2005: see SI 2005/968, art 2(f); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (6): paras (a), (b) substituted by the Water Act 2003, s 39(1), (6).

Date in force: 1 April 2005: see SI 2005/968, art 2(f); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-ss (6A), (6B): inserted by the Competition Act 1998, s 54(2), Sch 10, para 5(4).

Date in force (for certain purposes): 26 November 1998: see SI 1998/2750, art 2(1)(b).

Date in force (for remaining purposes): 1 March 2000: see SI 2000/344, art 2, Schedule.

Sub-s (6A): words “Subsections (2A) to (4) above and section 2A below” in square brackets substituted by the Water Act 2003, s 39(1), (7).

Date in force: 1 April 2005: see SI 2005/968, art 2(f); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (6A): words “the Authority” and “it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6B): words “The Authority” in square brackets substituted by virtue of the Water Act 2003, s

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36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6B): words “subsections (2A) to (4) above and section 2A below” in square brackets substituted by the Water Act 2003, s 39(1), (8).

Date in force: 1 April 2005: see SI 2005/968, art 2(f); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (6B): words “the CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 74.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (7): inserted by the Water Act 2003, s 39(1), (9).

Date in force: 1 April 2005: see SI 2005/968, art 2(f); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (7): reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(e).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

See Further

See further, in relation to the application of this section, with modifications, in respect of the general duty on the Secretary of State and the Water Services Regulation Authority for the purposes of their functions exercised under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 or under this Act: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(2), (3), (5).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[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;

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(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

(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.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 40.

Date in force: 1 April 2005: see SI 2005/968, art 2(g); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

3 General environmental and recreational duties

(1) It shall be the duty of each of the following, that is to say—

(a) the Secretary of State;

(b) . . .

(c) [the Authority]; and

(d) every company holding an appointment as a relevant undertaker,

in formulating or considering any proposals relating to any functions of a relevant undertaker (including, in

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the case of such a company, any functions which, by virtue of that appointment, are functions of the company itself) to comply with the requirements imposed in relation to the proposals by subsections (2) and (3) below.

(2) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are—

(a) a requirement, so far as may be consistent—

(i) with the purposes of any enactment relating to the functions of the undertaker; and

(ii) in the case of the Secretary of State and [the Authority], with their duties under section 2 above,

so to exercise any power conferred with respect to the proposals on the person subject to the requirement as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest [and, in the case of the exercise of such a power by a company holding an appointment as a relevant undertaker, as to further water conservation];

(b) a requirement to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and

(c) a requirement to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.

(3) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are, subject to the requirements imposed by subsection (2) above—

(a) a requirement to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;

(b) a requirement to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and

(c) a requirement to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(4) Subsections (1) to (3) above shall apply so as to impose duties on [the Authority] and any company holding an appointment as a relevant undertaker in relation to any proposal relating to—

(a) the functions of [the Environment Agency]; . . .

[(aa) the functions of the NRBW; or]

(b) the functions of an internal drainage board,

as they apply in relation to any proposals relating to the functions of such an undertaker; and for the purposes of this subsection the reference in subsection (2)(a) above to the functions of the undertaker shall have effect as a reference to the functions of [the Environment Agency][, the NRBW,] or, as the case may be, of the internal drainage board in question.

(5) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy

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authority before doing anything which causes navigation which is subject to the control of that authority to be obstructed or otherwise interfered with, it shall be the duty of every company holding an appointment as a relevant undertaker to take such steps as are—

(a) reasonably practicable; and

(b) consistent with the purposes of the enactments relating to the functions of the undertaker in question,

for securing, so long as that company has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

(6) It shall be the duty of a company holding an appointment as a relevant undertaker, in determining what steps to take in performance of any duty imposed by virtue of subsection (5) above, to take into account the needs of persons who are chronically sick or disabled.

(7) The obligations under this section of a company holding an appointment as a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.

(8) Nothing in this section or the following provisions of this Act shall require recreational facilities made available by a relevant undertaker to be made available free of charge.

(9) References in this section to the functions of a relevant undertaker shall be construed, without prejudice to section 156(7) below, as if those functions included the management, by a company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a relevant undertaker).

(10) In this section "building" includes structure.

NOTES

Derivation

Sub-ss (1)–(4) derived from the Water Act 1989, s 8(1), (2), (7); sub-ss (5), (6), (8) derived from the Water Act 1989, s 8(3), (5), (6); sub-s (7) derived from the Water Act 1989, s 20(8)(a)(i), (c); sub-ss (9), (10) derived from the Water Act 1989, s 8(7).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): para (b) repealed by SI 2002/794, art 5(2), Sch 2.

Date in force: 27 March 2002: see SI 2002/794, art 1(2).

Sub-s (1): in para (c) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (a)(ii) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (a) words from "and, in the case" to "further water conservation" in square brackets inserted by the Water Act 2003, s 82.

Date in force: 1 April 2004: see SI 2004/641, art 3(u); for transitional provisions see art 6,

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Sch 3, para 7 thereto.

Sub-s (4): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): words “the Environment Agency” in square brackets in both places they occur substituted by the Environment Act 1995, s 120, Sch 22, para 97.

Sub-s (4): in para (a) word omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 224(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): para (aa) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 224(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): words “, the NRBW,” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 224(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under this section shall be exercisable by the National Assembly for Wales to the same extent as the powers, duties and other provisions to which this section applies are exercisable by the Assembly.

4 Environmental duties with respect to sites of special interest

(1) Where [Natural England] or [the NRBW] are of the opinion that any area of land in England or, as the case may be, in Wales—

(a) is of special interest by reason of its flora, fauna or geological or physiographical features; and

(b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,

[Natural England or (as the case may be) [the NRBW]] shall notify the fact that the land is of special interest for that reason to every relevant undertaker whose works, operations or activities may affect the land.

(2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—

(a) is land in relation to which the matters for the purposes of which section 3 above has effect are of particular importance; and

(b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,

the National Park authority or Broads Authority shall notify the fact that the land is such land, and the reasons why those matters are of particular importance in relation to the land, to every relevant undertaker whose works, operations or activities may affect the land.

(3) Where a relevant undertaker has received a notification under subsection (1) or (2) above with respect to any land, that undertaker shall consult the notifying body before carrying out any works, operations or activities which appear to that undertaker to be likely—

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(a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or

(b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.

(4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to [Natural England], [the NRBW], the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.

(5) The obligations under this section of a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.

(6) In this section—

"the Broads" has the same meaning as in the Norfolk and Suffolk Broads Act 1988;

. . .

and section 3(9) above shall apply, as it applies in relation to that section, for construing (in accordance with section 6 below) any references in this section to a relevant undertaker.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 9(1), and the Environmental Protection Act 1990, Sch 9, para 17(2); sub-ss (2), (3), (6) derived from the Water Act 1989, s 9(2), (3), (5); sub-s (4) derived from the Water Act 1989, s 9(4), and the Environmental Protection Act 1990, Sch 9, para 17(2); sub-s (5) derived from the Water Act 1989, s 20(8)(a)(i), (c).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "Natural England" in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 129(1), (2)(a).

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (1): words "the NRBW" in square brackets in the first place they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 225(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): words in square brackets beginning with the words "Natural England or" substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 129(1), (2)(b).

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (1): words "the NRBW" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 225(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): words "Natural England" in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 129(1), (3).

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (4): words "the NRBW" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1,

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paras 223, 225(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (6): words omitted repealed by the Environment Act 1995, s 120, Sch 24.

Modification

Modification: references to a National Park authority modified by the Environment Act 1995, s 78, Sch 10, para 34.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

5 Codes of practice with respect to environmental and recreational duties

(1) The Secretary of State may by order approve any code of practice issued (whether by him or by another person) for the purpose of—

(a) giving practical guidance to relevant undertakers with respect to any of the matters for the purposes of which sections 3 and 4 above have effect; and

(b) promoting what appear to him to be desirable practices by such undertakers with respect to those matters,

and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.

(2) A contravention of a code of practice as for the time being approved under this section shall not of itself constitute a contravention of any requirement imposed by section 3 or 4 above or give rise to any criminal or civil liability; but the Secretary of State . . . shall . . . be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and how he should exercise his powers in relation to any relevant undertaker by virtue of this Act, any of the other consolidation Acts or the Water Act 1989.

(3) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The Secretary of State shall not make an order under this section unless he has first consulted—

(a) [the Environment Agency] [and the NRBW];

(b) [Natural England] . . .;

(c) the Historic Buildings and Monuments Commission for England;

(d) the Sports Council and the Sports Council for Wales; and

(e) such relevant undertakers and other persons as he considers it appropriate to consult.

(5) In this section "the other consolidation Acts" means the Water Resources Act 1991, the Statutory Water Companies Act 1991, the Land Drainage Act 1991 and the Water Consolidation (Consequential Provisions) Act 1991.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 10(1), (5); sub-ss (2), (3) derived from the Water Act 1989, s 10(2), (3); sub-s (4) derived from the Water Act 1989, s 10(4), the Environmental

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Protection Act 1990, Sch 9, para 17(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words omitted repealed by SI 2002/794, art 5(2), Sch 2.

Date in force: 27 March 2002: see SI 2002/794, art 1(2).

Sub-s (4): in para (a) words "the Environment Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 98.

Sub-s (4): in para (a) words "and the NRBW" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 226(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): in para (b) words "Natural England" in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 130.

Date in force: 1 October 2006: see SI 2006/2541, art 2; for transitional provisions see art 3, Schedule, para 1 thereto.

Sub-s (4): in para (b) words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 226(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water and Sewerage (Conservation, Access and Recreation) (Code of Practice) Order 2000, SI 2000/477.

Water, Animals, Marine Pollution and Environmental Protection (Miscellaneous Revocations) Order 2015, SI 2015/663.

Part II
Appointment and Regulation of Undertakers

Chapter I
Appointments

Making of appointments

6 Appointment of relevant undertakers

(1) Subject to the following provisions of this Chapter, a company may be appointed—

(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 Authority],

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to be the water undertaker or sewerage undertaker for any area of England and Wales.

(2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect, while the appointment remains in force—

(a) of requiring the company to perform any duty imposed by or under any enactment on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);

(b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any enactment on an undertaker of that description;

(c) of requiring enactments and subordinate legislation authorising or requiring anything to be done in relation to an undertaker of the relevant description to be construed as authorising or requiring that thing to be done in relation to that company; and

(d) of requiring other references in any enactment or subordinate legislation to an undertaker of the relevant description, or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.

(3) The appointment of a company to be a relevant undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made.

(4) A single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.

(5) A company shall not be appointed to be a water undertaker unless it is a limited company or a statutory water company and shall not be appointed to be a sewerage undertaker unless it is a limited company.

[(5A) A company shall not be appointed to be a relevant undertaker if it is a licensed water supplier.]

(6) As soon as practicable after making an appointment under this Chapter, the Secretary of State shall send a copy of the appointment to [the Authority].

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 11(1), (2); sub-ss (3), (4) derived from the Water Act 1989, s 11(3); sub-ss (5), (6) derived from the Water Act 1989, s 11(5), (8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (b) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 3.

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Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (6): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to general powers of companies holding appointments under this Chapter: the Statutory Water Companies Act 1991, s 1.

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 2.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

7 Continuity of appointments, replacement appointments etc

(1) It shall be the duty of the Secretary of State to secure that such appointments are made under this Chapter as will ensure that for every area of England and Wales there is at all times both—

(a) a company holding an appointment under this Chapter as water undertaker; and

(b) whether or not the same company in relation to the whole or any part of that area, a company holding an appointment as sewerage undertaker.

(2) Subject to the following provisions of this section—

(a) the Secretary of State; and

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, [the Authority],

shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.

(3) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as a relevant undertaker as secure either—

(a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or

(b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.

(4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company’s appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—

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(a) that company consents to the appointment or variation;

(b) the appointment or variation relates only to parts of that area none of the premises in which is served by that [company;

(bb) the appointment or variation relates only to parts of that area and the conditions mentioned in subsection (5) below are satisfied in relation to each of the premises in those parts which are served by that company; or]

(c) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of that company's appointment.

[(5) The conditions are that—

[(a) the premises are, or are likely to be, supplied with not less than the following quantity of water in any period of twelve months:

(i) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;

(ii) in all other cases, [50 megalitres]; and]

(b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.

(6) The Secretary of State may, after consulting [the Authority], make regulations amending subsection (5)(a) above by substituting, for the quantity of water for the time being specified there, such smaller quantity as he considers appropriate.]

NOTES

Derivation

Sub-ss (1)–(3) derived from the Water Act 1989, s 11(4), (6), (7); sub-s (4) derived from the Water Act 1989, s 12(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): in para (b) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): words in square brackets substituted by the Competition and Service (Utilities) Act 1992, s 40(1).

Sub-ss (5), (6): inserted by the Competition and Service (Utilities) Act 1992, s 40(2).

Sub-s (5): para (a) substituted by SI 2000/1842, reg 2(1), (2).

Date in force: 17 August 2000: see SI 2000/1842, reg 1.

Sub-s (5): in para (a)(ii) words "50 megalitres" in square brackets substituted by SI 2005/268, reg 2(1), (2).

Date in force: 1 April 2005: see SI 2005/268, reg 1.

Sub-s (6): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

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Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water and Sewerage Undertakers (Inset Appointments) Regulations 2000, SI 2000/1842 (made under sub-s (6)).

Water and Sewerage Undertakers (Inset Appointments) Regulations 2005, SI 2005/268 (made under sub-s (6)).

8 Procedure with respect to appointments and variations

(1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.

(2) Within fourteen days after making an application under this section, the applicant shall—

(a) serve notice of the application [on—

(i) the existing appointee,

(ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,

(iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,

(iv) the appropriate agency, and

(v) every] local authority whose area includes the whole or any part of the area to which the application relates; and

(b) publish a copy of the notice in such manner as may be prescribed.

(3) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or [the Authority] shall give notice—

(a) stating that [he or it] proposes to make the appointment or variation;

(b) stating the reasons why [he or it] proposes to make the appointment or variation; and

(c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made.

(4) A notice under subsection (3) above shall be given—

(a) by publishing the notice in such manner as the Secretary of State or, as the case may be, [the Authority] considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and

(b) by serving a copy of the notice [on—

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(i) the existing appointee,

(ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,

(iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,

(iv) the appropriate agency, and

(v) every] local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.

(5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or [the Authority] shall—

(a) serve a copy of the appointment or variation on the existing appointee; and

(b) serve notice of the making of the appointment or variation [on—

(i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,

(ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,

(iii) the appropriate agency, and

(iv) every] local authority whose area includes the whole or any part of the area to which the appointment or variation relates,

and as soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Secretary of State shall send a copy of the variation to [the Authority].

(6) In this section “the existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

[(6A) In this section “the appropriate agency”, in relation to the replacement of a relevant undertaker, means—

(a) the Environment Agency, if the undertaker’s area is wholly in England;

(b) the NRBW, if the undertaker’s area is wholly in Wales;

(c) both the Environment Agency and the NRBW, if the undertaker’s area is partly in England and partly in Wales.]

[(7) The Secretary of State may by regulations impose such additional procedural requirements as he considers appropriate for any case where the conditions mentioned in section 7(5) above are required to be satisfied in relation to an application for an appointment or variation replacing a company as a relevant undertaker.]

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NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 13(1), sub-ss (3)–(6) derived from the Water Act 1989, s 13(2), (3), (5), (7).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): in para (a) words from "on— (i) the" to "and (v) every" in square brackets substituted by the Water Act 2014, s 13(1), (2).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(b).

Sub-s (3): words "the Authority" and "he or it" in both places they occur in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (a) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (b) words from "on— (i) the" to "and (v) every" in square brackets substituted by the Water Act 2014, s 13(1), (3).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(b).

Sub-s (5): words "the Authority" in square brackets in both places they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): in para (b) words from "on— (i) if" to "and (iv) every" in square brackets substituted by the Water Act 2014, s 13(1), (4).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(b).

Sub-s (6A): inserted by the Water Act 2014, s 13(1), (5).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(b).

Sub-s (7): inserted by the Competition and Service (Utilities) Act 1992, s 40(3).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

9 Duties affecting making of appointments and variations

(1) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or [the Authority] shall consider any representations or objections which have been duly made in pursuance of the notice under section 8(3) above and have not been withdrawn.

(2) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State shall consult [the Authority].

(3) In determining whether to make an appointment or variation by virtue of section 7(4)(b) [or (bb)] above in relation to any part of an area, the Secretary of State or, as the case may be, [the Authority]

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shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by that appointee.

(4) It shall be the duty of the Secretary of State or, as the case may be, of [the Authority]—

(a) in making an appointment or variation replacing a company as a relevant undertaker; and

(b) where [he or it] makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of any water or drainage charges,

to ensure, so far as may be consistent with [his or its] duties under Part I of this Act, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

(5) In this section—

"existing appointee", in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;

"new appointee", in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;

"water or drainage charges" means

(a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; or

(b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 13(2), (4); sub-ss (3), (4) derived from the Water Act 1989, s 12(3), (4); sub-s (5) derived from the Water Act 1989, s 12(4), (6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words "or (bb)" in square brackets inserted by the Competition and Service (Utilities) Act 1992, s 40(4).

Sub-s (3): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

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Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): words “the Authority”, “he or it” and “his or its” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

10 Transitional provision with respect to replacement appointments

[(1)] Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

[(2) Subsections (3) and (4) below apply where, by such an appointment or variation, one company (“the new undertaker”) is to replace another company as a relevant undertaker, but the appointment or variation has not come into force.

(3) The following provisions of this Act shall (except where they are inapplicable to the kind of undertaker in question) apply in relation to the new undertaker as if the appointment or variation had come into force—

(a) sections 18 to 24 and Schedule 3;

(b) sections 32 to 35;

(c) section 155 and Schedule 9;

(d) sections 156, 158 to 161 and 163 to 167 and Schedule 11;

(e) sections 168 to 171, 173, 174, 178 to 180 and Schedule 12;

(f) sections 181 to 183 and Schedule 13;

(g) sections 184 to 188 and Schedule 14;

(h) sections 189 to 192, 197 to 200, 202, 203, 206, 208, 209, 211, 212 and 217.

(4) Such of the conditions imposed on the new undertaker under section 11 below as [the Authority] may specify in a written notice given by [it] to the undertaker shall have effect, in relation to the operation of any provision mentioned in subsection (3) above before the appointment or variation comes into force, as if the appointment or variation had come into force.

(5) The Secretary of State may by regulations amend subsection (3) above by adding to, removing or modifying references to provisions of this Act.]

NOTES

Derivation

This section derived from the Water Act 1989, s 13(6).

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Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Amendment

Sub-s (1): numbered as such by the Competition and Service (Utilities) Act 1992, s 42.
Sub-ss (2)–(5): inserted by the Competition and Service (Utilities) Act 1992, s 42.
Sub-s (4): words "the Authority" and "it" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Conditions of appointments

11 Power to impose conditions

(1) An appointment under this Chapter may include—

(a) such conditions as appear to the Secretary of State or, as the case may be, [the Authority] to be requisite or expedient having regard to the duties imposed on [him or it] by Part I of this Act;

(b) conditions for the purposes of section 7(4)(c) above; and

(c) conditions requiring the rendering to the Secretary of State of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.

(2) Conditions may be included by virtue of subsection (1)(a) above in an appointment under this Chapter whether or not they are connected with the supply of water, the provision of sewerage services or the exercise or performance of any power or duty conferred or imposed by or under any enactment on water undertakers or sewerage undertakers.

(3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(4) Any provision included by virtue of subsection (3) above in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.

(5) For the purposes of this Act where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this section shall have effect, irrespective of their subject-matter, as conditions of both appointments.

(6) Where an instrument of appointment has been served under subsection (3) of section 6 above on any company, the coming into force of the appointment for the purposes specified in subsection (2) of that

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section shall not be affected by any contravention of the requirements of this Act with respect to the provision contained by way of conditions of appointment in that instrument.

(7) If the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in subsection (6) above, he may by order made by statutory instrument direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.

(8) Any sums received by the Secretary of State in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 14(1); sub-ss (3), (4) derived from the Water Act 1989, s 14(3); sub-s (5) derived from the Water Act 1989, s 14(8); sub-ss (6), (7) derived from the Water Act 1989, s 14(9); sub-s (8) derived from the Water Act 1989, s 14(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (a) words “the Authority” and “him or it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

12 Determinations under conditions of appointment

(1) Without prejudice to the generality of paragraph (a) of section 11(1) above, conditions included in an appointment by virtue of that paragraph may—

(a) require the appointed company to comply with any direction given by [the Authority] as to such matters as are specified in the appointment or are of a description so specified; and

(b) require the appointed company, except in so far as [the Authority] consents to the company’s doing or not doing them, not to do or to do such things as are specified in the appointment or are of a description so specified.

(2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—

(a) the Secretary of State or [the Authority]; or

(b) on a reference by [the Authority], the [CMA],

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of such questions arising under the appointment and of such other matters, including (in the case of references to [the CMA]) disputes as to determinations by [the Authority], as are specified in the appointment or are of a description so specified.

(3) Where any question or other matter falls to be determined by the [CMA] in pursuance of a provision contained in an appointment under this Chapter—

(a) it shall be the duty of [the Authority], on being required to do so by the company holding that appointment, to refer that question or matter to [the CMA]; and

(b) it shall be the duty of [the CMA] to determine any question or other matter referred by virtue of paragraph (a) above in accordance with—

(i) . . .

(ii) the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by [the Authority].

[(3A) For the purposes of subsection (3) above, where—

(a) the question or matter referred to the [CMA] concerns the review of a price control imposed on the company holding the appointment; and

(b) the [CMA] is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the company in connection with the reference,

the [CMA] shall also have regard to the extent to which, in its view, its determination is likely to support the company's (rather than the Authority's) claims in relation to the question or matter referred to it.

(3B) Subsections (4) and (5) of section 14, and [sections 14A and 14B], below apply to references to the [CMA] under this section as they apply to references under section 14.

(3C) A report of the [CMA] on a reference under this section—

(a) shall be made to the Authority; and

(b) shall include definite conclusions on the questions or other matters comprised in the reference, together with such an account of their reasons for those conclusions as, in the opinion of the [CMA], is expedient for facilitating a proper understanding of those questions or other matters and of their conclusions,

and subsections (5) and (6) of section 15 below apply to such a report as they apply to a report on a reference under section 14.]

[(3D) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by subsection (3B) read with section [14B]).]

(4) . . .

(5) . . .

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 14(2); sub-s (3) derived from the Water Act

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1989, s 14(6); sub-ss (4), (5) derived from the Water Act 1989, s 14(7).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in paras (a), (b) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words “the Authority” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (b) reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (2)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): words “the CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (2)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (3)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): in paras (a), (b)(ii) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): in para (a) words “the CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (3)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): in para (b) words “the CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (3)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): para (b)(i) repealed by the Water Act 2003, ss 54(1), (3), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Sub-ss (3A)–(3C): inserted by the Water Act 2003, s 54(1), (2).

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Sub-s (3A): in paras (a), (b) reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3A): reference to “CMA” in square brackets in the final place it occurs substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3B): words “sections 14A and 14B” in square brackets substituted by the Water Act 2014, s 56, Sch 7, paras 2, 8(a).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(s).

Sub-s (3B): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory

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Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (5).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3C): reference to "CMA" in square brackets in the first place it occurs substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (5).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3C): in para (b) reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (5).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3D): inserted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 53(1), (6).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3D): reference to "14B" in square brackets substituted by the Water Act 2014, s 56, Sch 7, paras 2, 8(b).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(s).

Sub-ss (4), (5): repealed by the Water Act 2003, ss 54(1), (3), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Modification of appointment conditions

13 Modification by agreement

(1) Subject to the following provisions of this section, [the Authority] may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.

(2) Before making modifications under this section, [the Authority] shall give notice—

(a) stating that [it] proposes to make the modifications and setting out their effect;

(b) stating the reasons why [it] proposes to make the modifications; and

(c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3) A notice under subsection (2) above shall be given—

(a) by publishing the notice in such manner as [the Authority] considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy of the notice on the company and on the Secretary of State.

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(4) [The Authority] shall not under this section make any modifications which the Secretary of State has, within the time specified in the notice under subsection (2) above, directed [the Authority] not to make.

(5) The Secretary of State shall not give a direction under subsection (4) above in relation to any modification unless—

(a) the modification is a modification of provision contained in the appointment for the purposes of section 7(4)(c) above;

(b) the modification is a modification of a provision of the appointment which relates to the disposal of, or of interests or rights in or over, a company's protected land and is stated in the appointment to be a provision which cannot be modified; or

(c) it appears to the Secretary of State that the modification should be made, if at all, under section 16 below.

NOTES

Derivation

This section derived from the Water Act 1989, s 15.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "the Authority" and "it" in both places it occurs in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): in para (a) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): words "The Authority" and "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

14 Modification references to [CMA]

(1) [The Authority] may make to the [CMA] a reference which is so framed as to require [the CMA] to investigate and report on the questions—

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(a) whether any matters which—

(i) relate to the carrying out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; and

(ii) are specified in the reference,

operate, or may be expected to operate, against the public interest; and

(b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the company's appointment.

(2) [The Authority] may, at any time, by notice given to the [CMA] vary a reference under this section by—

(a) adding to the matters specified in the reference; or

(b) excluding from the reference some or all of the matters so specified;

and on receipt of any such notice [the CMA] shall give effect to the variation.

(3) [The Authority] may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [CMA] in carrying out the investigation on the reference—

(a) any effects adverse to the public interest which, in [its] opinion, the matters specified in the reference or variation have or may be expected to have; and

(b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in [its] opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this section or a variation of such a reference, [the Authority] shall—

(a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and

(b) publish particulars of the reference or variation in such manner as [it] considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) It shall be the duty of [the Authority], for the purpose of assisting the [CMA] in carrying out an investigation on a reference under this section [or in carrying out functions under section 16A below], to give to [the CMA]—

(a) any information in [its] possession which relates to matters falling within the scope of the investigation [or the carrying out of those functions], and which is either—

(i) requested by [the CMA] for that purpose; or

(ii) information which, in [its] opinion, it would be appropriate for that purpose to give to [the CMA] without any such request;

and

(b) any other assistance which [the CMA] may require, and which it is within [its] power to give, in relation to any such matters;

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and [the CMA], for the purpose of carrying out any such investigation, shall take account of any information [or such functions] given to them for that purpose under this subsection.

(6) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the [CMA] shall have regard to the matters as respects which duties are imposed on the Secretary of State and [the Authority] by Part I of this Act.

[(6A) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 14B and 16B).]

[(7) . . .

(7A) . . .

(8) . . .

(8A) . . .]

NOTES

Derivation

This section derived from the Water Act 1989, s 16.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (8).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1): words “The Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (2)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1): words “the CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (2)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): words “The Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (3)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

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Sub-s (2): words “the CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (3)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): words “The Authority” and “its” in both places it occurs in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): words “the Authority” and “it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): words “the Authority” and “its” in each place it occurs in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (5)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): words “or in carrying out functions under section 16A below” in square brackets inserted by the Water Act 2003, s 55(1), (2)(a).

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Sub-s (5): words “the CMA” in square brackets in the first and last places they occur substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (5)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): in para (a) words “or the carrying out of those functions” in square brackets inserted by the Water Act 2003, s 55(1), (2)(b).

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Sub-s (5): in para (a)(i), (ii) words “the CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (5)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): in para (b) words “the CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (5)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): words “or such functions” in square brackets inserted by the Water Act 2003, s 55(1), (2)(c).

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Sub-s (6): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (6).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6A): inserted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 54(1), (7).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and

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savings see art 2(2), Schedule.

Sub-ss (7), (7A), (8), (8A): substituted, for sub-ss (7), (8) as originally enacted, by the Competition Act 1998, s 54(3), Sch 10, para 13(3).

Date in force: 1 April 1999: see SI 1999/505, art 2, Schedule.

Sub-ss (7), (7A): repealed by the Enterprise Act 2002, s 278, Sch 25, para 25(1), (4), Sch 26.

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see arts 4, 8(g) thereof and the Enterprise Act 2002, s 276, Sch 24, paras 7–19.

Sub-ss (8), (8A): repealed by the Water Act 2003, ss 53(3), 101(2), Sch 9, Pt 2.

Date in force: 1 April 2004: see SI 2004/641, art 3(k), (z)(i); for transitional provisions see art 6, Sch 3, para 7 thereto.

[14A References under section 14: time limits]

[(1) Every reference under section 14 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the [CMA] on a reference under section 14 above shall not have effect (and no action shall be taken in relation to it under section 16 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by [the Authority] under subsection (3) below.

(3) [The Authority] may, if [it] has received representations on the subject from the [CMA] and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under subsection (3) above in relation to the same reference.

(5) [The Authority] shall, in the case of an extension made by [it] under subsection (3) above—

(a) publish that extension in such manner as [it] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

(b) send a copy of what has been published by [it] under paragraph (a) above to the company whose appointment is mentioned in the reference.]

NOTES

Amendment

Inserted by the Enterprise Act 2002, s 278(1), Sch 25, para 25(1), (5).

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for effect, transitional and transitory provisions see arts 4, 8(g) thereof and the Enterprise Act 2002, s 276, Sch 24, paras 7–19.

Sub-s (2): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 55.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words “The Authority” and “it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory

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Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 55.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): words "The Authority" and "it" in each place it occurs in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[14B References under section 14: powers of investigation]

[(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [(1A),] (2) and (3) below, for the purposes of references under section 14 above as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

[(1A) Section 109 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) for subsection (A1), there were substituted—

"(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 14 of the Water Industry Act 1991.", and

(b) subsection (8A) were omitted.]

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; . . .

[(aa) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part;]

(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

[(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

"(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.]

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(4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

(5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

NOTES

Amendment

Inserted by the Enterprise Act 2002, s 278(1), Sch 25, para 25(1), (5).

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for effect, transitional and transitory provisions see arts 4, 8(g) thereof and the Enterprise Act 2002, s 276, Sch 24, paras 7–19.

Sub-s (1): reference to "(1A)," in square brackets inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 75(1), (2).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (A1): inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 75(1), (3).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (2): in para (a) word omitted repealed by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 75(1), (4)(a).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (2): para (aa) inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 75(1), (4)(b).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (3): substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 75(1), (5).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

15 Reports on modification references

(1) In making a report on a reference under section 14 above, the [CMA]—

(a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating a proper understanding of those questions and of their conclusions;

(b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and

(c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.

[(1A) For the purposes of section 16 below, a conclusion contained in a report of the [CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference].

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 14 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for

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disagreeing.]

(2) . . .

[(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [CMA] on a reference under section 14 above.

(3A) In making any report on a reference under section 14 above the [CMA] must have regard to the following considerations before disclosing any information.

(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [CMA] thinks is contrary to the public interest.

(3C) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the [CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the [CMA] thinks might significantly harm the individual's interests.

(3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.]

(4) A report of the [CMA] on a reference under section 14 above shall be made to [the Authority].

(5) Subject to subsection (6) below, [the Authority]—

(a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter the report relates and to the Secretary of State; and

(b) shall, not less than fourteen days after that copy is received by the Secretary of State, publish another copy of that report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of fourteen days mentioned in paragraph (b) of subsection (5) above, direct [the Authority] to exclude that matter from every copy of the report to be published by virtue of that paragraph; and [the Authority] shall comply with any such direction.

NOTES

Derivation

This section derived from the Water Act 1989, s 17.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 56(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-ss (1A), (1B): inserted by the Enterprise Act 2002, s 278(1), Sch 25, para 25(1), (6)(a).

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Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for effect, transitional and transitory provisions see art 8(g) thereof and the Enterprise Act 2002, s 276, Sch 24, paras 7–19.

Sub-s (1A): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 56(1), (3)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1A): words "by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 56(1), (3)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): repealed by the Competition Act 1998, ss 54(3), 74(3), Sch 10, para 13(4), Sch 14, Pt I.

Date in force: 1 March 2000: see SI 2000/344, art 2, Schedule.

Sub-ss (3), (3A)–(3D): substituted, for sub-s (3) as originally enacted, by the Enterprise Act 2002, s 278(1), Sch 25, para 25(1), (6)(b).

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see arts 4, 8(g) thereof and the Enterprise Act 2002, s 276, Sch 24, paras 7–19.

Sub-ss (3), (3A), (3B): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 56(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3C): in paras (a), (b) reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 56(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 56(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): words "the Authority" in square brackets in both places they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

16 Modification following report

(1) Where a report of the [CMA] on a reference under section 14 above—

(a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;

(b) specifies effects adverse to the public interest which those matters have or may be expected to have;

(c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter; and

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(d) specifies modifications by which those effects could be remedied or prevented,

[the Authority] shall, subject to the following provisions of this section, make such modifications of the conditions of that appointment as appear to [it] requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making modifications under this section, [the Authority] shall have regard to the modifications specified in the report.

(3) Before making modifications under this section, [the Authority] shall give notice—

(a) stating that [it] proposes to make the modifications and setting out their effect;

(b) stating the reasons why [it] proposes to make the modifications; and

(c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) above shall be given—

(a) by publishing the notice in such manner as [the Authority] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy of the notice on the company whose appointment it is proposed to modify.

[(4A) After considering any representations or objections made in response to proposals set out in a notice under subsection (3) above, the Authority shall give notice to the [CMA]—

(a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and

(b) stating the reasons for making the modifications.

(4B) The Authority shall include with the notice under subsection (4A) above a copy of any representations or objections received in relation to the notice under subsection (3) above.

(4C) If the period of four weeks from the date on which the notice under subsection (4A) above is given elapses without a direction under section 16A(1)(a) below having been given to it, the Authority shall—

(a) make the modifications set out in the notice; or

(b) if a direction under section 16A(1)(b) below has been given, make the modifications which are not specified in the direction.]

(5) [The Authority] shall not under this section make any modification of any provisions of a company's appointment under this Chapter which—

(a) are contained in that appointment for the purposes of section 7(4)(c) above; or

(b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

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NOTES

Derivation

This section derived from the Water Act 1989, s 18.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 57.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1): words "the Authority" and "it" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words "the Authority" and "it" in both places it occurs in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (a) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (4A)–(4C): inserted by the Water Act 2003, s 55(1), (3).

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Sub-s (4A): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 57.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): words "The Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[16A [CMA's] power of veto following report]

[(1) [The CMA] may, within the period of four weeks after the date on which it is given a notice under section 16(4A) above, direct the Authority—

(a) not to make the modifications set out in that notice; or

(b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

(2) The Secretary of State may, within the period of four weeks after the date on which the [CMA] is given a notice under section 16(4A) above and on the application of the [CMA], direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 16(4C) above) shall be extended by fourteen days.

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(3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 16(4A)(a) above as appear to the [CMA] not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the [CMA] gives a direction under subsection (1) above, it—

(a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

(b) shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—

(i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;

(ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 16(4C)(b) above.

(5) In exercising its power under subsection (4)(b) above, the [CMA] shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a company's appointment.

(6) Before making modifications under subsection (4)(b) above the [CMA] shall give notice—

(a) stating that it proposes to make the modifications and setting them out;

(b) stating the reason why it proposes to make them;

(c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) A notice under subsection (4)(a) or (6) above shall be given—

(a) by publishing the notice in such manner as the [CMA] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy on the Authority and the company whose conditions of appointment it is proposed should be modified.

(8) The [CMA] may not make any modification under this section which the Authority could not make under section 16 above.

(9) After making modifications under this section the [CMA] shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

(10) . . .]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Inserted by the Water Act 2003, s 55(1), (4).

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Section heading: reference to "CMA's" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (5).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1): words "The CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): reference to "CMA" in square brackets in both places it occurs substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (7): in para (a) reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-ss (8), (9): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (10): repealed by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 58(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

[16B [CMA's] power of veto following report: supplementary]

[(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (9) of section 16A above.

(2) In giving any notice under subsection (4)(a) or (6) of section 16A above, or publishing any notice under subsection (9) of that section, the [CMA] must have regard to the following considerations before disclosing any information.

(3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [CMA] thinks is contrary to the public interest.

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(4) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the [CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or

(b) information relating to the private affairs of an individual whose disclosure the [CMA] thinks might significantly harm the individual's interests.

(5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.

(6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [(6A),] (7) and (8) below, for the purposes of any investigation by the [CMA] for the purposes of the exercise of its functions under section 16A above, as they apply for the purposes of any investigations on references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

[(6A) Section 109 shall, in its application by virtue of subsection (6) above, have effect as if—

(a) for subsection (A1), there were substituted—

"(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 16A of the Water Industry Act 1991.", and

(b) subsection (8A) were omitted.]

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

(a) subsection (2) were omitted;

[(b) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA of a notice under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the CMA under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part."; and]

(c) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

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(8) Section 111(5)(b) shall, in its application by virtue of subsection (6) above, have effect as if for sub-paragraph (ii) there were substituted—

> "(ii) if earlier, the day on which a notice is published by the [CMA] under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the [CMA] under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period."

(9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.

(10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 55(1), (4).

Date in force: 1 October 2004: see SI 2004/2528, art 2(h).

Section heading: reference to "CMA's" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 59(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-ss (2), (3): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 59(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): in paras (a), (b) reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 59(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6): reference to "(6A)," in square brackets inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 76(1), (2).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (6): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 59(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6A): inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 76(1), (3).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (7): para (b) substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 76(1), (4).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (8): in the Enterprise Act 2002, s 111(5)(b)(ii) (as set out) reference to "CMA" in square brackets in both places it occurs substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4, Sch 6, Pt 1, paras 52, 59(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

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17 Modification by order under other enactments

[(1) Where [CMA] or (as the case may be) the Secretary of State (in this section "the relevant authority") makes a relevant order, the order may, subject to subsection (3), also provide for the modification of the conditions of a company's appointment under this Chapter to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above "relevant order" means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the 2002 Act where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by a relevant undertaker; or

(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by a relevant undertaker; or

(b) an order under section 160 or 161 of the 2002 Act where the feature, or combination of features, of the market [or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition is—

(i) the structure or an aspect of the structure of a market for the supply of goods or services by a relevant undertaker; or

(ii) the conduct of a relevant undertaker or of customers of a relevant undertaker.]

(3) No modification shall be made by virtue of this section of any provisions of a company's appointment under this Chapter which—

(a) are contained in that appointment for the purposes of section 7(4)(c) above; or

(b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

[(4) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the 2002 Act have the same meanings in that subsection as in that Part.]

NOTES

Derivation

This section derived from the Water Act 1989, s 19.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (2): substituted by the Enterprise Act 2002, ss 86(5), 164(2), Sch 9, Pt 1, para 7(1), (2).
Date in force (for certain purposes): 20 June 2003: see SI 2003/1397, arts 2, 3(1), (6), Schedule; for effect and transitional provisions see art 4 thereof.
Date in force (for remaining purposes): 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 14–19.

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Sub-s (1): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 60.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): in para (b) words “or markets” in square brackets inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 77.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4): substituted by the Enterprise Act 2002, ss 86(5), 164(2), Sch 9, Pt 1, para 7(1), (3).

Date in force (for certain purposes): 20 June 2003: see SI 2003/1397, arts 2, 3(1), (6), Schedule; for effect and transitional provisions see art 4 thereof.

Date in force (for remaining purposes): 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 14–19.

Modification

Sub-s (2)(a): reference to paragraph 5, 10 or 11 of Schedule 7 to the Enterprise Act 2002 modified, to include a reference to paragraph 5, 10 or 11 of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, by the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, SI 2003/1592, art 16, Sch 4, para 10.

[Chapter 1A
Licensing of Water Suppliers]

NOTES

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for certain purposes): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for certain purposes): 1 August 2005: see SI 2005/968, art 3(b); for transitional provisions see art 4(1), Sch 2, para 4 thereto.

Date in force (for certain purposes): 1 October 2005: see SI 2005/2714, art 2(h); for transitional provisions see art 5(1), Schedule, paras 5, 8 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[Granting of licences]

NOTES

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for certain purposes): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for certain purposes): 1 August 2005: see SI 2005/968, art 3(b); for transitional provisions see art 4(1), Sch 2, para 4 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[17A Licensing of water suppliers]

[(1) Subject to the following provisions of this Chapter—

(a) the Secretary of State; or

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State (after consulting the Assembly), the Authority,

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may grant to a company a licence (a "water supply licence") giving it the retail authorisation referred to in subsection (2) below, or both that and the supplementary authorisation referred to in subsection (5) below.

(2) The retail authorisation is an authorisation to the company to use a water undertaker's supply system for the purpose of supplying water to the premises of customers of the company (subject to subsection (3) below) in accordance with Chapter 2A of Part 3 of this Act.

(3) The following requirements must be satisfied in relation to each of the premises supplied by the company—

(a) the requirement that the premises are not household premises (as defined in section 17C below);

(b) the threshold requirement (construed in accordance with section 17D below); and

(c) the requirement that the premises are not being supplied with water by another company pursuant to a water supply licence,

and those requirements shall be enforceable under section 18 below by the Authority.

(4) A water supply licence which gives a company only the retail authorisation is referred to in this Chapter as a "retail licence".

(5) The supplementary authorisation is an authorisation to the company to introduce water into a water undertaker's supply system, by means of which any particular supply of water in accordance with the retail authorisation is to take place, in connection with that supply and in accordance with Chapter 2A of Part 3 of this Act.

(6) A water supply licence which gives a company also the supplementary authorisation is referred to in this Chapter as a "combined licence".

(7) Before granting a combined licence—

(a) the Secretary of State shall consult the Assembly; and

(b) the Authority shall consult the Secretary of State and the Assembly.

(8) A water supply licence shall not be granted to a company unless—

(a) it is a limited company; and

(b) it is not a relevant undertaker.

(9) The Authority may, with the approval of the Secretary of State, issue guidance as to the factors which are, or are not, to be taken into account in determining the extent of any premises for the purposes of subsection (3) above.

(10) Before giving his approval to any guidance issued under subsection (9) above, the Secretary of State shall consult the Assembly.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

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Date in force (for the purposes of sub-ss (1), (2), (4)–(6), in part): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.
Date in force (for the purposes of sub-s (3), in part): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.
Date in force (for the purposes of sub-ss (9), (10)): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.
Date in force (for the purposes of s 17F hereof for certain purposes): 1 August 2005: see SI 2005/968, art 3(b); for transitional provisions see art 4(1), Sch 2, para 4 thereto.
Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 3(1).

[17B Section 17A: supplementary]

[(1) The Authority shall publish guidance issued under section 17A(9) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(2) The Authority may, with the approval of the Secretary of State, revise the guidance so issued.

(3) Before giving his approval to guidance revised under subsection (2) above, the Secretary of State shall consult the Assembly.

(4) Subsection (1) above applies to guidance revised under subsection (2) above as it applies to guidance issued under section 17A(9) above.

(5) In this Chapter, references to the supply system of a water undertaker are to the system comprising the following—

(a) any water mains and other pipes which it is the water undertaker's duty to develop and maintain by virtue of section 37 below and which are used for the purpose of conveying water from the undertaker's treatment works to the premises of customers; and

(b) any water mains and other pipes which—

(i) are used by the undertaker for the purpose of conveying non-domestic water from any of its sources to the premises of customers; and

(ii) are not connected to any water mains or pipes falling within paragraph (a) above or to any water mains or other pipes connected to the treatment works mentioned in that paragraph (whether directly or indirectly),

and in sub-paragraph (i) above the reference to non-domestic water is to water supplied other than for domestic or food production purposes.

(6) In subsection (5)(a) above, the reference to treatment works is a reference to the works designated from time to time by the Secretary of State as treatment works for the purposes of this subsection.

(7) Before designating any works for the purposes of subsection (6) above, the Secretary of State shall consult the Assembly.

(8) A list of any works designated for the purposes of subsection (6) above shall be published from

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time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.

(9) References in this Act to a licensed water supplier are references to a company which is the holder for the time being of a water supply licence.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

[17C Meaning of household premises]

[(1) For the purposes of section 17A(3)(a) above, "household premises" means premises in which, or in any part of which, a person has his home.

(2) The fact that a person has his home in, or in part of, any premises does not mean that the premises are household premises unless the principal use of the premises is as a home.

(3) The Secretary of State may by regulations make provision as to—

(a) the circumstances in which a person is or is not to be treated as having his home in, or in part of, any premises for the purposes of this section; and

(b) the factors which are, or are not, to be taken into account in determining the principal use of any premises for those purposes.

(4) The power to make regulations under subsection (3) above is exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

[17D The threshold requirement]

[(1) This section applies for the purpose of construing the reference to the threshold requirement in section 17A(3)(b) above in relation to the supply of water to any premises.

(2) The requirement is that, at the time when the licensed water supplier first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually pursuant to the undertaking [is not less than—

(a) 5 megalitres, in the case of premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in England, and

(b) 50 megalitres, in the case of premises supplied with water using the supply system of a water

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undertaker whose area is wholly or mainly in Wales].

(3) Any estimate of the quantity of water to be supplied to any premises for the purposes of subsection (2) above shall be made in accordance with guidance issued by the Authority with the approval of the Secretary of State.

(4) Any guidance issued under subsection (3) above may, in particular—

(a) specify—

(i) the factors to be, and not to be, taken into account;

(ii) the assumptions to be made; and

(iii) the method of calculation to be employed,

in making estimates; and

(b) make provision as to the commencement of the annual periods by reference to which estimates are to be made.

(5) Before giving his approval to any guidance issued under that subsection, the Secretary of State shall consult the Assembly.

(6) Subsections (1) to (4) of section 17B above apply to guidance issued under subsection (3) above as they apply to guidance issued under section 17A(9) above.

(7) The Secretary of State may make provision by regulations as to the circumstances in which a licensed water supplier is not, for the purposes of subsection (2) above, to be treated as entering into an undertaking with a new customer to give a supply of water to any premises (subject to subsection (12) below).

(8) The Secretary of State may by regulations amend subsection (2) above by substituting, for the quantity of water for the time being specified there, a different quantity of water (subject to subsection (12) below).

(9) Regulations under subsection (8) above—

(a) shall include provision for the amendment made by the regulations not to apply in relation to any undertaking entered into before the date on which the regulations come into force; and

(b) may include provision for that amendment not to apply in relation to any undertaking which is proposed, but not entered into, before that date.

(10) A statutory instrument containing regulations under subsection (8) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(11) Before making regulations under subsection (8) above, the Secretary of State shall consult—

(a) the Authority; and

(b) such other persons (if any) as the Secretary of State thinks it appropriate to consult.

(12) The powers to make regulations under subsections (7) and (8) above are exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

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(13) Subsections (9) and (11) above apply in relation to regulations made by the Assembly under subsection (8) above by virtue of subsection (12) above as they apply in relation to regulations made by the Secretary of State under subsection (8) above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for the purposes of sub-ss (1)–(7)): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for the purposes of sub-s (12), in part): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words from "is not less" to "mainly in Wales" in square brackets substituted by SI 2011/3014, reg 2.

Date in force: 15 December 2011: see SI 2011/3014, reg 1.

Subordinate Legislation

Water Supply Licence (New Customer Exception) Regulations 2005, SI 2005/3076 (made under sub-s (7)).

Water Supply (Amendment to the Threshold Requirement) Regulations 2011, SI 2011/3014 (made under sub-ss (8), (9)).

[17E Determinations by the Authority]

[(1) The Authority may determine, in a case referred to it by a licensed water supplier or a potential customer of a licensed water supplier, whether a proposed supply of water by the supplier to the customer would be in accordance with the retail authorisation given to the supplier in the licence.

(2) The matters which the Authority may determine include the following matters—

(a) the extent of the premises to be supplied for the purposes of section 17A(3) above;

(b) whether the premises to be supplied are household premises (as defined in section 17C above); and

(c) whether the threshold requirement is satisfied in relation to the premises to be supplied (construed in accordance with section 17D above),

and also include any other matter the determination of which is relevant to those matters.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[17F Procedure for granting water supply licences]

[(1) An application for—

(a) a water supply licence;

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(b) the variation of a retail licence so that it gives also the supplementary authorisation; or

(c) the variation of a combined licence so that it gives only the retail authorisation,

shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.

(2) . . .

(3) . . .

(4) If the Secretary of State or the Authority proposes to refuse the application, he or it shall give to the applicant a notice—

(a) stating that he or it proposes to refuse the application;

(b) stating the reasons why he or it proposes to refuse the application; and

(c) specifying the time within which representations or objections with respect to the proposed refusal may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) . . .

(6) A licence shall be in writing and, unless revoked or suspended in accordance with any condition contained in it, shall continue in force for such period as may be specified in or determined by or under the licence.

(7) As soon as practicable after granting a licence or variation of a licence, the Secretary of State or the Authority shall serve a copy of the licence or licence as varied—

(a) on the licence holder;

(b) on the Assembly;

(c) on the Chief Inspector of Drinking Water;

(d) on the Environment Agency;

[(da) on the NRBW;]

(e) on the Council;

(f) on each relevant undertaker;

(g) on each licensed water supplier (other than the holder of the licence in question);

(h) if the licence or variation is granted by the Secretary of State, on the Authority;

(i) if the licence or variation is granted by the Authority, on the Secretary of State.

(8) Any sums received by the Secretary of State or by the Authority by virtue of this section shall be paid into the Consolidated Fund.]

NOTES

Extent

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This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for the purposes of sub-ss (1)–(3) for certain purposes): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for the purposes of sub-s (5)): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for the purposes of sub-ss (1)–(3) for remaining purposes): 1 August 2005: see SI 2005/968, art 3(b); for transitional provisions see art 4(1), Sch 2, para 4 thereto.

Date in force (for the purposes of sub-ss (4), (8)): 1 August 2005: see SI 2005/968, art 3(b); for transitional provisions see art 4(1), Sch 2, para 4 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (2), (3): repealed by the Water Act 2014, s 25(1), (3).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(f).

Sub-s (5): repealed by the Water Act 2014, s 25(1), (3).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(f).

Sub-s (7): para (da) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 227.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to the application of this section, with modifications (specifically the insertion of new ss 17FA, 17FB following this section), for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 3(2).

Subordinate Legislation

Water Supply Licence (Application) Regulations 2005, SI 2005/1638.

[Licence conditions]

NOTES

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for certain purposes): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[17G Water supply licence conditions]

[(1) A water supply licence may include—

(a) such conditions as appear to the Secretary of State or, as the case may be, the Authority to be requisite or expedient having regard to the duties imposed on him or it by Part 1 of this Act;

(b) conditions requiring the rendering to the Secretary of State of a payment on the grant of a water supply licence, or payments while such a licence is in force, or both, of such amount or amounts as may be determined by or under the conditions.

(2) Conditions may be included by virtue of subsection (1)(a) above in a water supply licence whether or not they are connected with the supply of water or the introduction of water into a water undertaker's supply system.

(3) Conditions included in a water supply licence may—

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(a) require the holder of the licence to comply with any direction given by a specified relevant person as to specified matters or matters which are of a specified description;

(b) require the holder of the licence to do or not to do specified things or things which are of a specified description, except in so far as a specified relevant person consents to the holder's not doing or doing them; and

(c) provide for the reference to and determination by a specified relevant person of specified questions, or questions which are of a specified description, which arise under or in connection with the licence.

(4) For the purposes of subsection (3) above—

(a) the following are relevant persons—

(i) the Secretary of State;

(ii) the Authority;

(iii) the Assembly;

(iv) the Environment Agency; . . . [(v) th

e NRBW; and]

(b) "specified" means specified in the licence in question.

(5) Conditions included in a water supply licence may contain provision for the conditions to have effect, cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined in accordance with the conditions.

(6) Any such condition as is referred to in subsection (5) above shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of a licence.

(7) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for certain purposes): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (a)(iv) word omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 228(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): para (v) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 228(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

[17H Standard conditions of water supply licences]

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[(1) Such conditions as may be—

(a) determined by the Secretary of State (after consulting the Assembly); and

(b) published by him in such manner as he considers appropriate,

shall be standard conditions of water supply licences granted by the Secretary of State or the Authority.

(2) The standard conditions which may be determined may be different for—

(a) retail licences; and

(b) combined licences,

and standard conditions relating to the retail authorisation may be different depending on whether they are to relate to retail licences or combined licences.

(3) The power to determine standard conditions in relation to retail licences and combined licences may be exercised only before the grant of (respectively) the first retail licence and the first combined licence (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).

(4) The standard conditions for the purposes of water supply licences of either description may contain provision—

(a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;

(b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and

(c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.

(5) Subject to subsection (6) below, each condition which is a standard condition shall be incorporated by reference in each water supply licence (or in each such licence to which the standard condition applies).

(6) Subject to the following provisions of this section, the Secretary of State or the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as he or it considers requisite to meet the circumstances of a particular case.

(7) Before excluding any standard conditions or making any modifications under subsection (6) above, the Secretary of State or the Authority shall give notice—

(a) stating that he or it proposes to exclude the conditions or make the modifications and setting out the effect of so doing;

(b) stating the reasons why he or it proposes to exclude the conditions or make the modifications; and

(c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,

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and shall consider any representations or objections which are duly made and not withdrawn.

(8) A notice under subsection (7) above shall be given—

(a) by publishing the notice in such manner as the Secretary of State or (as the case may be) the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and

(b) by serving a copy of the notice—

(i) on the Assembly;

(ii) on the Chief Inspector of Drinking Water;

(iii) if the notice is published by the Secretary of State, on the Authority;

(iv) if the notice is published by the Authority, on the Secretary of State

.

(9) If, within the time specified in the notice under subsection (7) above, the Secretary of State (after consulting the Assembly) directs the Authority not to exclude or modify any standard condition, the Authority shall comply with the direction.

(10) The Secretary of State or the Authority shall not exclude any conditions, or make any modifications, under subsection (6) above unless he or it is of the opinion that the exclusions or modifications are such that—

(a) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and

(b) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).

(11) The modification under subsection (6) above of part of a standard condition shall not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for the purposes of sub-ss (1)–(4)): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, with modifications (specifically the insertion of a new s 17HA following this section), for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 4.

[Modification of licences]

NOTES

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Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for certain purposes): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for certain purposes): 1 October 2005: see SI 2005/2714, art 2(h); for transitional provisions see art 5(1), Schedule, paras 5, 8 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[17I Modification of water supply licences by agreement]

[(1) Subject to the following provisions of this section, the Authority may modify the conditions of a particular water supply licence

.

(2) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—

(a) are requisite to meet the circumstances of the particular case; and

(b) are such that—

(i) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and

(ii) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).

(3) Before making modifications under this section, the Authority shall give notice—

(a) stating that it proposes to make the modifications and setting out their effect;

(b) stating the reasons why it proposes to make the modifications; and

(c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) above shall be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy of the notice on—

(i) the licence holder;

(ii) the Council;

(iii) the Secretary of State;

(iv) the Assembly; and

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(v) the Chief Inspector of Drinking Water.

(5) If, within the period specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.

(6) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, with modifications (specifically the insertion of a new s 17IA following this section), for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(1).

[17J Modification of standard conditions of water supply licences]

[(1) Subject to the following provisions of this section, the Authority may modify the standard conditions of retail licences or combined licences

.

(2) Where at any time the Authority modifies the standard conditions of retail licences or combined licences under this section the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that description.

(3) Before making any modifications under this section, the Authority shall give notice—

(a) stating that it proposes to make the modifications and setting out their effect;

(b) stating the reasons why it proposes to make the modifications; and

(c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) above shall be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy of the notice on—

(i) each relevant licence holder;

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(ii) the Council;

(iii) the Secretary of State;

(iv) the Assembly; and

(v) the Chief Inspector of Drinking Water.

(5) If, within the time specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.

(6) The Authority may not under this section make any modifications of the standard conditions of retail licences or combined licences unless—

(a) no notice of objection to those modifications is given by any relevant licence holder to the Authority within the time specified in the notice under subsection (3) above;

(b) if one or more relevant licence holders give notice of objection to the Authority within that time—

(i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be specified in an order made by statutory instrument by the Secretary of State; and

(ii) the percentage given by subsection (7) below is less than such percentage as may be so specified; or

(c) subsection (8) below applies to the case.

(7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share at such time and in such manner as may be specified in an order under subsection (6) above.

(8) This subsection applies where the Authority is satisfied that—

(a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;

(b) the modifications would remove or reduce the burden without removing any necessary protection; and

(c) the modifications are such that no holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences.

(9) An order under subsection (6) above may include such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

(10) Before making an order under subsection (6) above, the Secretary of State shall consult the Assembly.

(11) A statutory instrument containing an order under subsection (6) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(12) Where the Authority modifies the standard conditions of retail licences or combined licences, the Authority shall—

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(a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and

(b) publish the modifications in such manner as it considers appropriate.

(13) In this section "relevant licence holder", in relation to proposed modifications of standard conditions of retail licences or combined licences, means the holder of a licence of that description—

(a) which is to be modified under the proposals by the inclusion of any new standard condition; or

(b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 17H(4) above) at the time specified in the notice under subsection (3) above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force (for the purposes of sub-ss (6), (7), (9)–(11), in part): 1 April 2004: see SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.
Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Subordinate Legislation

Water Supply Licence (Modification of Standard Conditions) Order 2005, SI 2005/2033 (made under sub-s (6)).

[17K Water supply licences: modification references to [CMA]]

[(1) The Authority may make to the [CMA] a reference which is so framed as to require the [CMA to] investigate and report on the questions—

(a) whether any matters which—

(i) relate to the carrying on of activities authorised or regulated by a particular licence; and

(ii) are specified in the reference,

operate, or may be expected to operate, against the public interest; and

(b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the conditions of the licence.

(2) The Authority may make to the [CMA] a reference which is so framed as to require the [CMA] to investigate and report on the questions—

(a) whether any matters which—

(i) relate to the carrying on of activities authorised or regulated by retail licences or combined licences; and

(ii) are specified in the reference,

operate, or may be expected to operate, against the public interest; and

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(b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the standard conditions of licences of that description.

(3) The Authority may, at any time, by notice given to the [CMA] vary a reference under this section by—

(a) adding to the matters specified in the reference; or

(b) excluding from the reference some of the matters so specified,

and on receipt of any such notice the [CMA] shall give effect to the variation.

(4) The Authority may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [CMA] in carrying out the investigation on the reference—

(a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and

(b) any modifications of the relevant conditions by which, in its opinion, those effects could be remedied or prevented.

(5) As soon as practicable after making a reference under this section or a variation of such a reference, the Authority shall—

(a) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and

(b) serve a copy of the reference or variation on—

(i) the licence holder or, as the case may be, the relevant licence holders;

(ii) the Council;

(iii) the Secretary of State;

(iv) the Assembly; and

(v) the Chief Inspector of Drinking Water.

(6) If, before the end of the period of twenty-eight days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the [CMA]—

(a) not to proceed with the reference; or

(b) not to give effect to the variation,

the [CMA] shall comply with the direction.

(7) It shall be the duty of the Authority, for the purpose of assisting the [CMA] in carrying out an investigation on a reference under this section or in carrying out functions under section 17P below, to give to the [CMA]—

(a) any information in the Authority's possession which relates to matters falling within the scope of the investigation or the carrying out of those functions and which is either—

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(i) requested by the [CMA] for that purpose; or

(ii) information which, in the Authority's opinion, it would be appropriate for that purpose to give to the [CMA] without any such request; and

(b) any other assistance which the [CMA] may require, and which it is within the Authority's power to give, in relation to any such matters,

and the [CMA], for the purpose of carrying out any such investigation or such functions, shall take account of any information given to it for that purpose under this subsection.

(8) In this section and the following provisions of this Chapter—

"relevant conditions"—

(a) in relation to a reference under subsection (1) above, means the conditions of the licence to which the reference relates; and

(b) in relation to a reference under subsection (2) above, means the standard conditions of the licences to which the reference relates; and

"relevant licence holder" means the holder of a licence to which a reference under subsection (2) above relates.

(9) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the [CMA] shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Authority by Part 1 of this Act.

[(10) The functions of the CMA with respect to a reference under this section are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 17M and 17Q).]]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(h); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Section heading: reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (5).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (2)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1): words "CMA to" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (2)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): reference to "CMA" in square brackets in both places it occurs substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and

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savings see art 2(2), Schedule.

Sub-s (3): reference to “CMA” in square brackets in both places it occurs substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6): reference to “CMA” in square brackets in both places it occurs substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (7): reference to “CMA” in square brackets in each place they occur substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (9): word “Commission” in italics repealed and subsequent reference in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (10): inserted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 61(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(2).

[17L References under section 17K: time limits]

[(1) Every reference under section 17K above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the [CMA] on a reference under section 17K above shall not have effect (and no action shall be taken in relation to it under section 17O below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.

(3) The Authority may, if it has received representations on the subject from the [CMA] and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under subsection (3) above in relation to the same reference.

(5) The Authority shall, in the case of an extension made by it under subsection (3) above—

(a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

(b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.]

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NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (2), (3): word "Commission" in italics repealed and subsequent reference in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 62.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(3).

[17M References under section 17K: powers of investigation]

[(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [(1A),] (2) and (3) below, for the purposes of references under section 17K above as they apply for the purposes of references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

[(1A) Section 109 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) for subsection (A1), there were substituted—

"(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 17K of the Water Industry Act 1991.", and

(b) subsection (8A) were omitted.]

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; . . .

[(aa) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed

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since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part."; and]

(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

[(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

> "(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.".]

(4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

(5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(h); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): reference to "(1A)," in square brackets inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 78(1), (2).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (1A): inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 78(1), (3).

Date in force: 1 April 2014: see SI 2014/892, art 1(1).

Sub-s (2): in para (a) word omitted repealed by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 78(1), (4)(a).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (2): para (aa) inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 78(1), (4)(b).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (3): substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 78(1), (5).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(3).

[17N Water supply licences: reports on modification references]

[(1) In making a report on a reference under section 17K above, the [CMA]—

(a) shall include in the report definite conclusions on the questions comprised in the reference

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together with such an account of its reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of its conclusions;

(b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and

(c) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) For the purposes of section 17O below, a conclusion contained in a report of the [CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference].

(3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 17K above as the conclusions of the [CMA], the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [CMA] on a reference under section 17K above.

(5) In making any report on a reference under section 17K above the [CMA] must have regard to the following considerations before disclosing any information.

(6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [CMA] thinks is contrary to the public interest.

(7) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the [CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or

(b) information relating to the private affairs of an individual whose disclosure the [CMA] thinks might significantly harm the individual's interests.

(8) The third consideration is the extent to which the disclosure of the information mentioned in subsection (7)(a) or (b) above is necessary for the purposes of the report.

(9) A report of the [CMA] on a reference under section 17K above shall be made to the Authority.

(10) Subject to subsection (13) below, the Authority shall—

(a) on receiving a report on a reference under section 17K(1) above, serve a copy of it on—

(i) the licence holder;

(ii) the Council;

(iii) the Secretary of State; and

(iv) the Assembly; and

(b) not earlier than the relevant time, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.

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(11) Subject to subsection (13) below, the Authority shall—

(a) on receiving a report on a reference under section 17K(2) above, serve a copy of it on—

(i) the Secretary of State; and

(ii) the Assembly; and

(b) not earlier than the relevant time—

(i) serve another copy on each relevant licence holder; and

(ii) not less than twenty-four hours after complying with sub-paragraph (i) above, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(12) For the purposes of subsections (10) and (11) above, the "relevant time" means—

(a) fourteen days after the copy of the report in question is received by the Secretary of State and the Assembly, or

(b) if copies are received by them on different days, fourteen days after the later day.

(13) Subsection (14) below applies if it appears to the Secretary of State that the publication of any matter in a report on a reference under section 17K(1) or (2) above would be against—

(a) the public interest; or

(b) the commercial interests of any person.

(14) The Secretary of State may, not later than the relevant time for the purposes of subsection (10) or (11) above, direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be served and published as mentioned in paragraph (b) of that subsection; and the Authority shall comply with any such direction.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 63(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 63(1), (3)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): words "by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 63(1), (3)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory

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Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 63(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 63(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 63(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 63(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (7): in paras (a), (b) reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 63(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (9): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 63(1), (4).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(4).

[17O Water supply licences: modification following report]

[(1) Where a report of the [CMA] on a reference under section 17K above—

(a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;

(b) specifies effects adverse to the public interest which those matters have or may be expected to have;

(c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and

(d) specifies modifications by which those effects could be remedied or prevented,

the Authority shall, subject to the following provisions of this section, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences

in consequence of a reference under section 17K(2) above, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.

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(3) Before making modifications under this section, the Authority shall have regard to the modifications specified in the report.

(4) Before making modifications under this section, the Authority shall give notice—

(a) stating that it proposes to make the modifications and setting out their effect;

(b) stating the reasons why it proposes to make the modifications; and

(c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under subsection (4) above shall be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications;

(b) by serving a copy of the notice on the holder of the licence in question or, as the case may be, the relevant licence holders; and

(c) by serving a copy of the notice on—

(i) the Council;

(ii) the Secretary of State;

(iii) the Assembly; and

(iv) the Chief Inspector of Drinking Water.

(6) After considering any representations or objections made in response to proposals set out in a notice under subsection (4) above, the Authority shall give notice to the [CMA]—

(a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and

(b) stating the reasons for making the modifications.

(7) The Authority shall include with the notice under subsection (6) above a copy of any representations or objections received in relation to the notice under subsection (4) above.

(8) If the period of four weeks from the date on which the notice under subsection (6) above is given elapses without a direction under section 17P(1)(a) below having been given to it, the Authority shall—

(a) make the modifications set out in the notice; or

(b) if a direction under section 17P(1)(b) below has been given, make the modifications which are not specified in the direction.

(9) The modification under subsection (1) above of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

(10) Where at any time it modifies under subsection (1) above the standard conditions of retail

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licences or combined licences in consequence of a reference under section 17K(2) above, the Authority shall—

(a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and

(b) publish the modifications made for those purposes in such manner as it considers appropriate.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 64.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 64.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(5).

[17P Water supply licences: [CMA's] power of veto following report]

[(1) The [CMA] may, within the period of four weeks after the date on which it is given a notice under section 17O(6) above, direct the Authority—

(a) not to make the modifications set out in that notice; or

(b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

(2) The Secretary of State may—

(a) within the period of four weeks after the date on which the [CMA] is given a notice under section 17O(6) above; and

(b) on the application of the [CMA],

direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 17O(8) above) shall be extended by fourteen days.

(3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 17O(6)(a) above as appear to the [CMA] not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the [CMA] gives a direction under subsection (1) above, it shall—

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(a) give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

(b) make such modifications itself of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—

(i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;

(ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 17O(8)(b) above.

(5) In exercising its power under subsection (4)(b) above the [CMA] shall have regard to the matters as respects which duties are imposed on the Authority by Part 1 of this Act.

(6) Before making modifications under subsection (4)(b) above the [CMA] shall give notice—

(a) stating that it proposes to make the modifications and setting them out;

(b) stating the reason why it proposes to make them;

(c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) A notice under subsection (4)(a) or (6) above shall be given—

(a) by publishing the notice in such manner as the [CMA] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications;

(b) by serving a copy of the notice on—

(i) the Authority;

(ii) the holder of the licence in question or, as the case may be, the relevant licence holders;

(iii) the Council;

(iv) the Secretary of State;

(v) the Assembly; and

(vi) the Chief Inspector of Drinking Water.

(8) After making modifications under this section the [CMA] shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

(9) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

(10) Where, in consequence of a reference under section 17K(2) above, the [CMA] modifies under

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subsection (4)(b) above the standard conditions of retail licences or combined licences

,

the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.

(11) Where, in consequence of a reference under section 17K(2) above, the [CMA] modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority shall—

(a) make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time, and

(b) publish the modifications made for those purposes in such manner as it considers appropriate.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: reference to "CMA's" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 65(1), (3).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(h); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): in paras (a), (b) reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (5): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (7): in para (a) reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

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Sub-s (8): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (10): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (11): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 65(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(6).

[17Q Section 17P: supplementary]

[(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8) of section 17P above.

(2) In giving any notice under subsection (4)(a) or (6) of section 17P above, or publishing any notice under subsection (8) of that section, the [CMA] must have regard to the following considerations before disclosing any information.

(3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [CMA] thinks is contrary to the public interest.

(4) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the [CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or

(b) information relating to the private affairs of an individual whose disclosure the [CMA] thinks might significantly harm the individual’s interests.

(5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.

(6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [(6A),] (7) and (8) below, for the purposes of any investigation by the [CMA] for the purposes of the exercise of its functions under section 17P above, as they apply for the purposes of any investigation on references under that Part—

(a) section 109 (attendance of witnesses and production of documents etc);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

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(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

[(6A) Section 109 shall, in its application by virtue of subsection (6) above, have effect as if—

(a) for subsection (A1), there were substituted—

"(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 17P of the Water Industry Act 1991.", and

(b) subsection (8A) were omitted.]

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

(a) subsection (2) were omitted,

[(b) after subsection (3), there were inserted—

"(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA of a notice under section 17P(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the CMA under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part."; and]

(c) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—

> "(ii) if earlier, the day on which a notice is published by the [CMA] under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the [CMA] under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period."

(9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.

(10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(h); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory

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Reform Act 2013, Sch 6, Pt 1, paras 52, 66.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 66.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (4): in paras (a), (b) reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 66.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6): reference to "(6A)," in square brackets inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 79(1), (2).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (6): reference to "CMA" in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 66.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (6A): inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 79(1), (3).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (7): para (b) substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 79(1), (4).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (8): in the Enterprise Act 2002, s 111(5)(b)(ii) (as set out) reference to "CMA" in square brackets in both places it occurs substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 66.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(7).

[17R Water supply licences: modification by order under other enactments]

[(1) Where the [CMA] or the Secretary of State (the "relevant authority") makes a relevant order, the order may also provide for the modification of—

(a) the conditions of a particular retail licence or combined licence; or

(b) the standard conditions of retail licences or combined licences,

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above "relevant order" means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or

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(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or

(b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a retail licence or combined licence.

(3) The modification under subsection (1)(a) above of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

(4) Where at any time the relevant authority modifies under subsection (1)(b) above the standard conditions of retail licences or combined licences, the relevant authority—

(a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and

(b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences of that description granted before that time.

(5) Where at any time the relevant authority modifies standard conditions of retail licences or combined licences under subsection (4)(a) above for the purposes of their incorporation in licences, the relevant authority shall publish those modifications in such manner as the relevant authority considers appropriate.

(6) Expressions used in subsection (2) above and in Part 3 or 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 2.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): reference to “CMA” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, Sch 6, Pt 1, paras 52, 67.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): in para (b) words “or markets” in square brackets inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 80.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 5(8).

Chapter II
Enforcement and Insolvency

Enforcement orders

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18 Orders for securing compliance with certain provisions

(1) Subject to subsection (2) and sections 19 and 20 below, where in the case of any company holding an appointment under Chapter I of this Part [or a licence under Chapter 1A of this Part] the Secretary of State or [the Authority] is satisfied—

(a) that that company is contravening—

(i) any condition of the company's appointment [or licence] in relation to which [he or it] is the enforcement authority; or

(ii) any statutory or other requirement which is enforceable under this section and in relation to which [he or it] is the enforcement authority;

or

(b) that that company [is likely to contravene any such condition or requirement],

[he or it] shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

[(1A) Subject to subsection (2) and sections 19 and 20 below, where—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, the Secretary of State or the Authority is satisfied that the company—

(i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding a licence under Chapter 1A of this Part; or

(ii) is likely to cause or contribute to any such contravention; or

(b) in the case of any company holding a licence under Chapter 1A of this Part, the Secretary of State or the Authority is satisfied that the company—

(i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding an appointment under Chapter 1 of this Part; or

(ii) is likely to cause or contribute to any such contravention,

he or it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.]

(2) Subject to section 19 below, where in the case of any company holding an appointment under Chapter I of this Part [or a licence under Chapter 1A of this Part]—

(a) it appears to the Secretary of State or [the Authority] as mentioned in paragraph (a) or (b) of subsection (1) [or (1A)] above; and

(b) it appears to him that it is requisite that a provisional enforcement order be made,

he may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to him requisite for the purpose of securing compliance with the condition or requirement in question.

(3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional enforcement order be made, the Secretary of State or, as the case may be, [the Authority]

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shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other requirement enforceable under this section, is likely to be done, or omitted to be done, before a final enforcement order may be made.

(4) Subject to sections 19 and 20 below, where the Secretary of State or [the Authority] has made a provisional enforcement order, [he or it] shall confirm it, with or without modifications, if—

(a) [he or it] is satisfied that the company to which the order relates—

(i) is contravening any condition or statutory or other requirement in relation to which [he or it] is the enforcement authority; or

[(ii) is likely to contravene any such condition or requirement;] [or

(iii) is causing or contributing to a contravention of any such condition or requirement; or

(iv) is likely to cause or contribute to any such contravention;] and

(b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

(5) An enforcement order—

(a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;

(b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and

(c) may be revoked at any time by the enforcement authority who made it.

(6) For the purposes of this section and the following provisions of this Act—

(a) the statutory and other requirements which shall be enforceable under this section in relation to a company holding an appointment under Chapter I of this Part [or a licence under Chapter 1A of this Part] shall be such of the requirements of any enactment or of any subordinate legislation as—

(i) are imposed in consequence of that appointment [or licence]; and

(ii) are made so enforceable by that enactment or subordinate legislation;

(b) [the Authority] shall be the enforcement authority in relation to the conditions of an appointment under Chapter I of this Part [or of a licence under Chapter 1A of this Part]; and

(c) the enforcement authority in relation to each of the statutory and other requirements enforceable under this section shall be the Secretary of State, [the Authority] or either of them, according to whatever provision is made by the enactment or subordinate legislation by which the requirement is made so enforceable.

(7) In this section and the following provisions of this Chapter—

"enforcement order" means a final enforcement order or a provisional enforcement order;

"final enforcement order" means an order under this section other than a provisional enforcement order;

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"provisional enforcement order" means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

[(8) Where any act or omission—

(a) constitutes a contravention of a condition of an appointment under Chapter 1 of this Part or of a condition of a licence under Chapter 1A of this Part or of a statutory or other requirement enforceable under this section; or

(b) causes or contributes to a contravention of any such condition or requirement,

the only remedies for, or for causing or contributing to, that contravention (apart from those available by virtue of this section) shall be those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting, or causing or contributing to, such a contravention.]

NOTES

Derivation

Sub-ss (1)–(4) derived from the Water Act 1989, s 20(1)–(4); sub-ss (5)–(8) derived from the Water Act 1989, s 20(7)–(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "or a licence under Chapter 1A of this Part" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (2)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words "the Authority" and "he or it" in each place they occur in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): in para (a)(i) words "or licence" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (2)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): in para (b) words "is likely to contravene any such condition or requirement" in square brackets substituted by the Water Act 2003, s 49(1), (2)(a).

Date in force: 1 October 2004: see SI 2004/2528, art 2(f).

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "or a licence under Chapter 1A of this Part" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (4)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (a) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (a) words "or (1A)" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (4)(b).

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Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): words “the Authority” and “he or it” in each place they occur in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): para (a)(ii) substituted by the Water Act 2003, s 49(1), (2)(b).

Date in force: 1 October 2004: see SI 2004/2528, art 2(f).

Sub-s (4): para (a)(iii), (iv) and word “or” immediately preceding them inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (5).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): in para (a) words “or a licence under Chapter 1A of this Part” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (6)(a)(i).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): in para (a)(i) words “or licence” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (6)(a)(ii).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): in paras (b), (c) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): in para (b) words “or of a licence under Chapter 1A of this Part” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (6)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (8): substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 4(1), (7).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of sub-s (1A) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(1).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

19 Exceptions to duty to enforce

(1) [Subject to the Drinking Water (Undertakings) (England and Wales) Regulations 2000,] neither the Secretary of State nor [the Authority] shall be required to make an enforcement order in relation to any company, or to confirm a provisional enforcement order so made, if [he or it] is satisfied—

(a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;

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[(aa) that the extent to which the company caused or contributed to, or was likely to cause or contribute to, a contravention was trivial;]

(b) that the company has given, and is complying with, an undertaking to take all such steps as it appears to [him or it] for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or

(c) that the duties imposed on [him or it] by Part I of this Act preclude the making or, as the case may be, the confirmation of the order.

[(1A) Before making an enforcement order or confirming a provisional enforcement order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(1B) The Authority shall not make an enforcement order or confirm a provisional enforcement order if it considers that it would be more appropriate to proceed under the Competition Act 1998.]

(2) The requirement to comply with an undertaking given for the purposes of subsection (1)(b) above shall be treated as a statutory requirement 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 Authority].

(3) Where the Secretary of State or [the Authority], having notified a company that [he or it] is considering the making in relation to the company of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in paragraph (a), [(aa),] (b) or (c) of subsection (1) above [or, in the case of [the Authority],] [has decided that it would be more appropriate to proceed under the Competition Act 1998], [he or it] shall—

(a) serve notice that [he or it] is so satisfied [or has so decided] on the company;

[(b) publish in such manner as the Secretary of State or the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them—

(i) a copy of the notice, and

(ii) where the Secretary of State or the Authority is satisfied as mentioned in paragraph (b) of subsection (1), a summary of the undertaking describing the steps to be taken under it; and]

(c) in a case where the Secretary of State is satisfied as mentioned in the said paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that paragraph on [the Authority].

[(3A) In a case where notice under subsection (3)(a) falls to be served by the Welsh Ministers, references to the Secretary of State in subsection (3)(b) are to be read as references to the Welsh Ministers.]

(4) The requirements of subsection (3) above shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

NOTES

Derivation

Sub-ss (1), (3), (4) derived from the Water Act 1989, s 20(5), (6); sub-s (2) derived from the Water

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Act 1989, s 20(8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words “Subject to the Drinking Water (Undertakings) (England and Wales) Regulations 2000,” in square brackets inserted by SI 2000/1297, reg 8.

Date in force: 14 June 2000: see SI 2000/1297, reg 1(1).

Sub-s (1): words “the Authority”, “he or it” and “him or it” in both places they occur in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): para (aa) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 5(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1A): inserted by the Competition Act 1998, s 54(3), Sch 10, para 13(6).

Date in force: 1 March 2000: see SI 2000/344, art 2, Schedule.

Sub-ss (1A), (1B): substituted, for sub-s (1A), by the Enterprise and Regulatory Reform Act 2013, s 51(5), Sch 14, paras 8, 9(1), (2).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(b), (e); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (2): in para (b) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words “the Authority” and “he or it” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): reference to “(aa),” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 5(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): words in square brackets beginning with the words “or, in the case” inserted by the Competition Act 1998, s 54(3), Sch 10, para 13(7).

Date in force: 1 March 2000: see SI 2000/344, art 2, Schedule.

Sub-s (3): words “has decided that it would be more appropriate to proceed under the Competition Act 1998” in square brackets substituted by the Enterprise and Regulatory Reform Act 2013, s 51(5), Sch 14, paras 8, 9(1), (3)(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(b), (e); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): in para (a) words “or has so decided” in square brackets inserted by the Enterprise and Regulatory Reform Act 2013, s 51(5), Sch 14, paras 8, 9(1), (3)(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(b), (e); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): para (b) substituted by SI 2010/996, reg 2(1), (2).

Date in force: 20 April 2010: see SI 2010/996, reg 1.

Sub-s (3A): inserted by SI 2010/996, reg 2(1), (3).

Date in force: 20 April 2010: see SI 2010/996, reg 1.

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(2).

Transfer of Functions

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Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales. Save however, that the function under sub-s (4) shall be exercisable by the Assembly concurrently with the Minister of the Crown by whom it is exercisable.

20 Procedure for enforcement orders

(1) Before making a final enforcement order [under section 18(1) above] or confirming a provisional enforcement order [in a case in which section 18(4)(a)(i) or (ii) above applies], the Secretary of State or [the Authority] shall give notice—

(a) stating that [he or it] proposes to make or confirm the order and setting out the effect of the order;

(b) setting out—

(i) the condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;

(ii) the acts or omissions which, in [his or its] opinion, constitute or would constitute contraventions of that condition or requirement; and

(iii) the other facts which, in [his or its] opinion, justify the making or confirmation of the order;

and

(c) specifying the period (not being less than [twenty-one] days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

[(1A) Before making a final enforcement order under section 18(1A) above or confirming a provisional enforcement order in a case in which section 18(4)(a)(iii) or (iv) above applies, the Secretary of State or the Authority shall give notice—

(a) stating that he or it proposes to make or confirm the order and setting out the effect of the order;

(b) setting out—

(i) the condition or requirement for the purposes of securing compliance with which the order is to be made or confirmed;

(ii) the acts or omissions which, in his or its opinion, cause or contribute to or would cause or contribute to the contravention of that condition or requirement; and

(iii) the other facts which, in his or its opinion, justify the making or confirmation of the order; and

(c) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections to the proposed order or proposed

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confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.]

(2) A notice under subsection (1) [or (1A)] above shall be given—

(a) by publishing the notice in such manner as the Secretary of State or, as the case may be, [the Authority] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and, where the notice is given by the Secretary of State, on [the Authority].

(3) Neither the Secretary of State nor [the Authority] shall make a final enforcement order with modifications, or confirm a provisional enforcement order with modifications, except—

(a) with the consent to the modifications of the company to which the order relates; or

(b) after complying with the requirements of subsection (4) below.

(4) The requirements mentioned in subsection (3) above are that the Secretary of State or, as the case may be, [the Authority] shall—

(a) serve on the company to which the order relates such notice as appears to [him or it] to be requisite of [his or its] proposal to make or confirm the order with modifications;

(b) in that notice specify the period (not being less than [twenty-one] days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and

(c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making an enforcement order or confirming a provisional enforcement order, the Secretary of State or, as the case may be, [the Authority] shall—

(a) serve a copy of the order on the company to which the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on [the Authority]; and

(b) publish such a copy in such manner as [he or it] considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.

(6) Before revoking an enforcement order, other than an unconfirmed provisional order, the Secretary of State or [the Authority] shall give notice—

(a) stating that [he or it] proposes to revoke the order and setting out its effect; and

(b) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) If, after giving a notice under subsection (6) above, the Secretary of State or [the Authority] decides not to revoke the order to which the notice relates, [he or it] shall give notice of that decision.

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(8) A notice under subsection (6) or (7) above shall be given—

(a) by publishing the notice in such manner as the Secretary of State or, as the case may be, [the Authority] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice on the company to which the order relates and, where the notice is given by the Secretary of State, on [the Authority].

(9) The requirements of the preceding provisions of this section shall not apply, in the case of any order in respect of a contravention of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

NOTES

Derivation

This section derived from the Water Act 1989, s 21.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words “under section 18(1) above” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 6(1), (2)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words “in a case in which section 18(4)(a)(i) or (ii) above applies” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 6(1), (2)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words “the Authority”, “he or it” and “his or its” in both places they occur in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): in para (c) words “twenty-one” in square brackets substituted by the Water Act 2003, s 49(1), (3).

Date in force: 1 October 2004: see SI 2004/2528, art 2(f); for effect see the Water Act 2003, s 49(4).

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 6(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words “or (1A)” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 6(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in paras (a), (b) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): words “the Authority”, “him or it” and “his or its” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

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Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (b) words “twenty-one” in square brackets substituted by the Water Act 2003, s 49(1), (3).

Date in force: 1 October 2004: see SI 2004/2528, art 2(f); for effect see the Water Act 2003, s 49(4).

Sub-s (5): words “the Authority” in both places they occur and “he or it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): words “the Authority” and “he or it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (7): words “the Authority” and “he or it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (8): in paras (a), (b) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(2).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales. Save however, that the function under sub-s (9) shall be exercisable by the Assembly concurrently with the Minister of the Crown by whom it is exercisable.

21 Validity of enforcement orders

(1) If the company to which an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—

(a) that its making or confirmation was not within the powers of section 18 above; or

(b) that any of the requirements of section 20 above have not been complied with in relation to it,

the company may, within forty-two days from the date of service on it of a copy of the order, make an application to the High Court under this section.

(2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this section, the validity of an enforcement order shall not be questioned in any legal proceedings whatsoever.

NOTES

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Derivation

This section derived from the Water Act 1989, s 22(1)–(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(2).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

22 Effect of enforcement order

(1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.

(2) Where a duty is owed by virtue of subsection (1) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(3) In any proceedings brought against any company in pursuance of subsection (2) above, other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of section 68(1)(a) [or (1A)(a)] below, it shall be a defence for the company to show that it took all reasonable steps and exercised all due diligence to avoid contravening the order.

(4) Without prejudice to any right which any person may have by virtue of subsection (1) above to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings by the relevant enforcement authority for an injunction or for any other appropriate relief.

(5) In subsection (4) above "the relevant enforcement authority", in relation to any enforcement order, means the Secretary of State or [the Authority] or either of them according to who is the enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

NOTES

Derivation

This section derived from the Water Act 1989, s 22(4)–(8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): words "or (1A)(a)" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8,

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paras 2, 7.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(2).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[Financial penalties]

NOTES

Amendment

Inserted by the Water Act 2003, s 48(1).

Date in force (for certain purposes): 1 October 2004: see SI 2004/2528, art 2(e).
Date in force (for remaining purposes): 1 April 2005: see SI 2005/968, art 2(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

[22A Penalties]

[(1) Where the Authority is satisfied—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—

(i) has contravened or is contravening any condition of the appointment;

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any condition of the licence; or

(iii) has failed or is failing to achieve any standard of performance prescribed under section 38(2) or 95(2) below; or

(b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—

(i) has contravened or is contravening any condition of the licence; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment,

the Authority may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

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(2) Where the Authority, the Secretary of State or the Assembly is satisfied—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—

(i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding a licence under Chapter 1A of this Part of any such requirement; or

(b) in the case of any company holding a licence under Chapter 1A of this Part, that the company—

(i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any such requirement,

he or it may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

(3) In a case in which—

(a) subsection (1) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection, or

(b) subsection (2) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection,

references in the following provisions of this section and sections 22B and 22C below to a contravention include references to causing or contributing to a contravention.

(4) Before imposing a penalty on a company under subsection (1) or (2) above the Authority, the Secretary of State or the Assembly (the “enforcement authority”) shall give notice—

(a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;

(b) setting out the condition, requirement or standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and

(d) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) Before varying any proposal stated in a notice under subsection (4)(a) above the enforcement authority shall give notice—

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(a) setting out the proposed variation and the reasons for it; and

(b) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) As soon as practicable after imposing a penalty, the enforcement authority shall give notice—

(a) stating that he or it has imposed a penalty on the company and its amount;

(b) setting out the condition, requirement or standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and

(d) specifying a date, no earlier than the end of the period of forty-two days from the date of service of the notice on the company, by which the penalty is required to be paid.

(7) The company may, within twenty-one days of the date of service on it of a notice under subsection (6) above, make an application to the enforcement authority for him or it to specify different dates by which different portions of the penalty are to be paid.

(8) Any notice required to be given under this section shall be given—

(a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;

(b) by serving a copy of the notice on the company;

(c) by serving a copy of the notice on the Council; and

(d) where the notice is given by the Secretary of State or the Assembly, by serving a copy of the notice on the Authority.

(9) Any sums received by the enforcement authority by way of penalty under this section shall be paid into the Consolidated Fund.

(10) The power of the enforcement authority to impose a penalty under this section is not exercisable in respect of any contravention or failure before the commencement of this section.

(11) No penalty imposed by an enforcement authority under this section may exceed 10% of the turnover of the company (determined

in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).

(12) The power of the Secretary of State to make an order under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

[(13) Before imposing a penalty under this section, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

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(14) The Authority shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 48(1).

Date in force (in so far as it relates to sub-s (4) for the purpose of defining "enforcement authority"): 1 October 2004: see SI 2004/2528, art 2(e).

Date in force (in so far as it relates to sub-s (11) for the purpose of enabling the Secretary of State to make orders): 1 October 2004: see SI 2004/2528, art 2(e).

Date in force (in so far as it relates to sub-s (12)): 1 October 2004: see SI 2004/2528, art 2(e).

Date in force (for remaining purposes): 1 April 2005: see SI 2005/968, art 2(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-ss (13), (14): substituted, for sub-s (13), by the Enterprise and Regulatory Reform Act 2013, s 51(5), Sch 14, paras 8, 10.

Date in force (for the purposes of enabling the exercise of any power to make provision by regulations, rules or order made by statutory instrument): 25 April 2013: see the Enterprise and Regulatory Reform Act 2013, s 103(1)(i).

Date in force (for remaining purposes): 1 April 2014: see SI 2014/416, art 2(1)(b), (e); for transitional provisions and savings see art 2(2), Schedule.

See Further

See further, in relation to the application of sub-ss (1), (2) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(3).

Subordinate Legislation

Water Industry (Determination of Turnover for Penalties) Order 2005, SI 2005/477 (made under sub-s (11)).

[22B Statement of policy with respect to penalties]

[(1) Each enforcement authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.

(2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure an enforcement authority shall have regard to his or its statement of policy most recently published at the time when the contravention or failure occurred.

(3) An enforcement authority may revise his or its statement of policy and where he or it does so shall publish the revised statement.

(4) Publication under this section shall be in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) An enforcement authority shall undertake such consultation as he or it considers appropriate when preparing or revising his or its statement of policy.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Inserted by the Water Act 2003, s 48(1).

Date in force: 1 October 2004: see SI 2004/2528, art 2(e).

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(4).

[22C Time limits on the imposition of financial penalties]

[(1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure later than the end of the period of [five years] from the time of the contravention or failure, unless before the end of that period—

(a) the notice under section 22A(4) above relating to the penalty is served on the company under section 22A(8) above; or

(b) a notice relating to the contravention or failure is served on the company under section 203(2) below.

(2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 22A(4) above was served on the company under section 22A(8) above—

(a) within three months from the confirmation of the provisional order or the making of the final order; or

(b) where the provisional order is not confirmed, within six months from the making of the provisional order.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 48(1).

Date in force: 1 April 2005: see SI 2005/968, art 2(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): words “five years” in square brackets substituted by the Water Act 2014, s 26(1).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g); for effect see s 26(2).

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(4).

[22D Interest and payment of instalments]

[(1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.

(2) If an application is made under subsection (7) of section 22A above in relation to a penalty, the penalty is not required to be paid until the application has been determined.

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(3) If the enforcement authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the enforcement authority under that subsection, the enforcement authority may where he or it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 48(1).

Date in force: 1 April 2005: see SI 2005/968, art 2(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(4).

[22E Appeals]

[(1) If the company on which a penalty is imposed is aggrieved by—

(a) the imposition of the penalty;

(b) the amount of the penalty; or

(c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the company may make an application to the court under this section.

(2) An application under subsection (1) above must be made—

(a) within forty-two days from the date of service on the company of a notice under section 22A(6) above; or

(b) where the application relates to a decision of an enforcement authority on an application by the company under section 22A(7) above, within forty-two days from the date the company is notified of the decision.

(3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4) below, the court—

(a) may quash the penalty;

(b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or

(c) in the case of an application under subsection (1)(c) above, may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.

(4) The grounds falling within this subsection are—

(a) that the imposition of the penalty was not within the power of the enforcement authority under section 22A above;

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(b) that any of the requirements of subsections (4) to (6) or (8) of section 22A above have not been complied with in relation to the imposition of the penalty and the interests of the company have been substantially prejudiced by the non-compliance; or

(c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

(5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.

(7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.

(8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.

(9) In this section "the court" means the High Court.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 48(1).

Date in force: 1 April 2005: see SI 2005/968, art 2(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(4).

[22F Recovery of penalties]

[Where a penalty imposed under section 22A(1) or (2) above, or any portion of it, has not been paid by the date on which it is required to be paid and—

(a) no application relating to the penalty has been made under section 22E above during the period within which such an application can be made; or

(b) an application has been made under that section and determined,

the enforcement authority may recover from the company, as a civil debt due to him or it, any of the penalty and any interest which has not been paid.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 48(1).

Date in force: 1 April 2005: see SI 2005/968, art 2(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

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See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 6(4).

Special administration orders

23 Meaning and effect of special administration order

(1) A special administration order is an order of the High Court made in accordance with section 24 or 25 below in relation to a company holding an appointment under Chapter I of this Part [or which is a qualifying licensed water supplier] and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court—

(a) for the achievement of the purposes of such an order; and

(b) in a manner which protects the respective interests of the members and creditors of the company.

(2) The purposes of a special administration order made in relation to any company [holding an appointment under Chapter 1 of this Part] shall be—

(a) the transfer to another company, or (as respects different parts of the area to which the company's appointment relates, or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and

(b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation which replaces the former company as a relevant undertaker).

[(2A) The purposes of a special administration order made in relation to any company which is a qualifying licensed water supplier shall be—

(a) the transfer to another company or companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that activities relating to the introduction or introductions of water mentioned in subsection (6)(b) below may be properly carried on; and

(b) the carrying on of those activities pending the making of the transfer.]

[(2B) Where a company is in special administration as a result of an order made on the grounds that the company is or is likely to be unable to pay its debts—

(a) a purpose of the special administration order is to rescue the company as a going concern, and

(b) the transfer purpose under subsection (2)(a) or (2A)(a) applies only if the special administrator thinks that—

(i) it is not likely to be possible to rescue the company as a going concern, or

(ii) transfer is likely to secure more effective performance of the functions or activities mentioned in subsection (2)(a) or (2A)(a).

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(2C) Where subsection (2B) applies, subsections (2)(b) and (2A)(b) have effect as if they referred to carrying out functions, or carrying on activities, pending rescue or transfer.

(2D) For the purpose of rescuing the company as a going concern a special administrator may propose—

(a) a company voluntary arrangement under Part 1 of the Insolvency Act 1986, or

(b) a compromise or arrangement in accordance with Part 26 of the Companies Act 2006.

(2E) The Secretary of State may by regulations made by statutory instrument—

(a) modify a provision of the Insolvency Act 1986 or the Companies Act 2006 in respect of the arrangements and compromises mentioned in subsection (2D) in so far as they apply to a company which is or has been in special administration;

(b) make other supplemental provision about those arrangements and compromises (which may, in particular, apply or modify the effect of an enactment about insolvency or companies).

(2F) Provision under subsection (2E)(a) or (b) may, in particular, confer a function on—

(a) the Secretary of State,

(b) the Welsh Ministers, or

(c) the Authority.

(2G) Regulations under subsection (2E) may not be made unless—

(a) the Welsh Ministers have consented to the making of the regulations, and

(b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]

(3) Schedule 3 to this Act shall have effect for applying provisions of the Insolvency Act 1986 where a special administration order is made.

[(3) Schedule B1 to the Insolvency Act 1986 (administration) applies to special administration (subject to regulations under subsection (3A)).

(3A) The Secretary of State may make regulations about special administration which—

(a) apply (with or without modification) an insolvency provision;

(b) disapply an insolvency provision;

(c) modify the effect of an insolvency provision;

(d) make provision similar to, and in place of, an insolvency provision.

(3B) In subsection (3A) “insolvency provision” means a provision of the Insolvency Act 1986 or another enactment about insolvency (including (i) a provision about administration, (ii) a provision about consequences of insolvency, and (iii) a provision conferring power to make rules).

(3C) A reference in an enactment to Part II of the Insolvency Act 1986 includes a reference to that Part as applied by or under this section (subject to regulations under subsection (3A)).

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(3D) Regulations under subsection (3A) shall be made by statutory instrument and may not be made unless—

(a) the Welsh Ministers have consented to the making of the regulations, and

(b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]

(4) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which—

[(a) a company is replaced by another as a relevant undertaker without an appointment or variation under Chapter 1 of this Part; or

(b) a company carries on activities relating to the introduction or introductions of water mentioned in subsection (6)(b) below formerly carried on by another company,

in pursuance of a special administration order].

(5) In this section "business" and "property" have the same meanings as in the Insolvency Act 1986.

[(6) For the purposes of this section, sections 24 to 26 below and Schedule 2 to this Act, a licensed water supplier is a qualifying licensed water supplier if—

(a) it is the holder of a combined licence (within the meaning of Chapter 1A of this Part); and

(b) the introduction of water by it which is permitted under section 66B or 66C below is designated as a strategic supply under section 66G below or the introductions of water by it which are so permitted are designated as a collective strategic supply under section 66H below

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NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 23(2), (3); sub-ss (3), (4) derived from the Water Act 1989, s 23(8); sub-s (5) derived from the Water Act 1989, s 23(9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Amendment

Sub-s (1): words "or which is a qualifying licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 8(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "holding an appointment under Chapter 1 of this Part" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 8(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 8(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (2B)–(2G): inserted, in relation to England and Wales, by the Flood and Water Management Act 2010, s 34, Sch 5, para 3.

Date in force (for the purpose of making regulations under sub-s (2E)): 1 October 2010: see SI 2010/2169, art 4, Schedule.

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Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(a).

Sub-s (3): substituted, by subsequent sub-ss (3), (3A)–(3D), in relation to England and Wales, by the Flood and Water Management Act 2010, s 34, Sch 5, para 6(1).

Date in force (for the purpose of making regulations under sub-s (3A)): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(a).

Sub-s (4): paras (a), (b) and words "in pursuance of a special administration order" immediately following them substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 8(1), (5).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 8(1), (6).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 7(2).

24 Special administration orders made on special petitions

(1) If, on an application made to the High Court by petition presented—

(a) by the Secretary of State; or

(b) with the consent of the Secretary of State, by [the Authority],

that Court is satisfied in relation to any company which holds an appointment under Chapter I of this Part that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.

[(1A) If on an application made to the High Court by petition presented—

(a) by the Secretary of State (after consulting the Assembly); or

(b) with the consent of the Secretary of State (after consulting the Assembly), the Authority,

the Court is satisfied in relation to any company which is a qualifying licensed water supplier that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.]

(2) The grounds mentioned in [subsections (1) and (1A)] above are, in relation to any company—

(a) that there has been, is or is likely to be such a contravention by the company of any principal duty, not being a contravention in respect of which a notice has been served under subsection (3) of section 19 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment [or licence];

(b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—

(i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) above; and

(ii) if it is a provisional enforcement order, has been confirmed,

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as is serious enough to make it inappropriate for the company to continue to hold its appointment [or licence];

[(bb) in the case of a company which is a qualifying licensed water supplier, that—

(i) action taken by the company has caused a contravention by a water undertaker of any principal duty; and

(ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;]

(c) that the company is or is likely to be unable to pay its debts;

(d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 25 below, for him to petition for the winding up of the company under section 440 of the Companies Act 1985 (petition by the Secretary of State following inspectors' report etc.), it would be just and equitable, as mentioned in that section, for the company to be wound up if it did not hold an appointment under Chapter I of this Part [or was not a qualifying licensed water supplier]; or

(e) [in the case of a company holding an appointment under Chapter 1 of this Part,] that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or [the Authority] to be necessary by reason of or in connection with, a proposal for the making by virtue of section 7(4)(c) above of any appointment or variation replacing a company as a relevant undertaker.

(3) Notice of any petition under this section for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the Insolvency Act 1986 ("the 1986 Act"); and no such petition shall be withdrawn except with the leave of the High Court.

(4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a special administration order in relation to any company as they apply on the hearing of a petition for an administration order.

(5) Subsections (1), (2) and (4) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a special administration order in relation to any company as if—

(a) the reference in subsection (1) to an administration order were a reference to a special administration order;

(b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of and exercise of functions by, administrative receiver); and

(c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 18 above.

(6) For the purposes of this section a company is unable to pay its debts if—

(a) it is a limited company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or

(b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).

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[(7) In this section "principal duty" means—

(a) in relation to a company holding an appointment under Chapter 1 of this Part, a requirement imposed on the company by section 37 or 94 below;

(b) in relation to a company which is a qualifying licensed water supplier, any condition of its licence or any statutory requirement imposed on it in consequence of its licence.]

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 23(1); sub-ss (2), (7) derived from the Water Act 1989, s 23(4); sub-ss (3)–(5) derived from the Water Act 1989, s 23(5)–(7); sub-s (6) derived from the Water Act 1989, s 23(9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (b) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 9(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "subsections (1) and (1A)" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 9(1), (3)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in paras (a), (b) words "or licence" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 9(1), (3)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): para (bb) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 9(1), (3)(c).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (d) words "or was not a qualifying licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 9(1), (3)(d).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (e) words from "in the case" to "of this Part," in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 9(1), (3)(e).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (e) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (7): substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 9(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the

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regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 7(3).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section (except sub-s (2)(d)) are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

25 Power to make special administration order on winding-up petition

On an application made to any court for the winding up of a company which holds an appointment under Chapter I of this Part [or is a qualifying licensed water supplier]—

(a) the court shall not make a winding-up order in relation to the company; but

(b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment [or a qualifying licensed water supplier], it shall, instead, make a special administration order in relation to the company.

NOTES

Derivation

This section derived from the Water Act 1989, s 24(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Words “or is a qualifying licensed water supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 10(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

In para (b) words “or a qualifying licensed water supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 10(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 7(5).

Restrictions on voluntary winding up and insolvency proceedings

26 Restrictions on voluntary winding up and insolvency proceedings

(1) Where a company holds an appointment under Chapter I of this Part [or is a qualifying licensed water supplier]—

(a) the company shall not be wound up voluntarily;

(b) no administration order shall be made in relation to the company under Part II of the Insolvency Act 1986; and

(c) no step shall be taken by any person to enforce any security over the company’s property

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except where that person has served fourteen days' notice of his intention to take that step on the Secretary of State and on [the Authority].

(2) In this section "security" and "property" have the same meanings as in Parts I to VII of the Insolvency Act 1986.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 24(1); sub-s (2) derived from the Water Act 1989, s 23(9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "or is a qualifying licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 11.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): in para (c) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 7(6).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Chapter III
Protection of Customers etc

General provisions

27 General duty of [Authority] to keep matters under review

(1) It shall be the duty of [the Authority], so far as it appears to [it] practicable from time to time to do so, to keep under review the carrying on both in England and Wales and elsewhere of activities connected with the matters in relation to which—

[(a) water undertakers or sewerage undertakers carry out functions; and

(b) licensed water suppliers carry on activities authorised by their licences].

(2) It shall also be the duty of [the Authority], so far as it appears to [it] practicable from time to time to do so, to collect information with respect to—

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(a) the carrying out by companies appointed under Chapter I of this Part of the functions of relevant undertakers; or

[(aa) the carrying on by companies holding licences under Chapter 1A of this Part of the activities authorised by their licences; or]

(b) any [company mentioned in paragraph (a) or (aa) above],

with a view to [its] becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on [it] by or under any enactment.

(3) The Secretary of State may give general directions indicating—

(a) considerations to which [the Authority] should have particular regard in determining the order of priority in which matters are to be brought under review in performing [its] duty under subsection (1) or (2) above; and

(b) considerations to which, in cases where it appears to [the Authority] that any of [its] powers under Parts II to V and VII of this Act are exercisable, [it] should have particular regard in determining whether to exercise those powers;

and it shall be the duty of [the Authority] to comply with any such directions.

(4) It shall be the duty of [the Authority], where either [it] considers it expedient or [it] is requested by the Secretary of State or [the CMA] to do so, to give information, advice and assistance to the Secretary of State or [the CMA] with respect to any matter relating to—

(a) the functions of either description of relevant undertaker; or

(b) the carrying out of any such functions by a company holding an appointment under Chapter I of this Part[; or

(c) the activities authorised by retail licences or combined licences (within the meanings of Chapter 1A of this Part); or

(d) the carrying on of any such activities by a company holding any such licence].

NOTES

Derivation

This section derived from the Water Act 1989, s 26.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: word “Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words “the Authority” and “it” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): paras (a), (b) substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 12(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

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Sub-s (2): words “the Authority”, “it” in both places it occurs and “its” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): para (aa) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 12(1), (3)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): in para (b) words “company mentioned in paragraph (a) or (aa) above” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 12(1), (3)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): words “the Authority”, “its” and “it” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): words “the Authority” and “it” in both places it occurs in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): words “the CMA” in square brackets in both places they occur substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 81.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4): paras (c), (d) and word “; or” immediately preceding them inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 12(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

See Further

See further, in relation to the application of sub-ss (1), (2), (4) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 8.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), the functions under sub-s (4) above shall be exercisable by the National Assembly for Wales concurrently with the Minister of the Crown by whom they are exercisable.

[The Consumer Council for Water]

NOTES

Amendment

Inserted by the Water Act 2003, s 35(1).

Date in force (for certain purposes): 1 August 2005: see SI 2005/968, art 3(a).

Date in force (for certain purposes): 1 October 2005: see SI 2005/2714, art 2(a)(i).

Date in force (for remaining purposes): 1 April 2006: see SI 2005/2714, art 4(b); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[27A Establishment of the Council and committees]

[(1) There shall be a body corporate to be known as the Consumer Council for Water (in this Act referred to as “the Council”) for the purpose of carrying out the functions of the Council under this Act.

(2) In Welsh the Council may be known as “Cyngor Defnyddwyr Dwr”.

(3) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

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(4) The Council shall establish such committees of the Council—

(a) as the Assembly may direct, for relevant undertakers whose areas are wholly or mainly in Wales; and

(b) as the Secretary of State may direct, for other relevant undertakers.

(5) A direction under subsection (4) above may provide for the allocation of each relevant undertaker to a committee specified in the direction.

(6) The power to give a direction under subsection (4) above may not be exercised after the end of the period of six months beginning with the commencement of section 35 of the Water Act 2003.

(7) After the end of the period mentioned in subsection (6) above the Council may (subject to paragraph 11 of Schedule 3A to this Act)—

(a) establish such committees for relevant undertakers as it considers appropriate; or

(b) alter the allocation of a relevant undertaker to a committee established under this section.

(8) The Council shall ensure that each relevant undertaker is allocated to a committee established under this section.

(9) A committee established under this section is referred to in this Act as a "regional committee".

(10) The purposes of a regional committee shall be—

(a) the provision of advice and information to the Council on consumer matters affecting the areas of the relevant undertakers allocated to that committee;

(b) such other purposes as the Council may determine.

(11) The provisions of Schedule 3A to this Act (which makes further provision about the Council and regional committees) shall have effect.

(12) The Council shall exercise and perform its powers and duties in the manner which it considers is best calculated to contribute to the achievement of sustainable development.

(13) In this Chapter—

"consumers" includes both existing and future consumers;

"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; and

"consumer matter" means any matter connected with the interests of consumers.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

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Inserted by the Water Act 2003, s 35(1).

Date in force (in so far as it relates to sub-s (4) having effect for the purpose of enabling the Assembly and the Secretary of State to give directions): 1 August 2005: see SI 2005/968, art 3(a)(i).

Date in force (in so far as it relates to sub-ss (5), (6)): 1 August 2005: see SI 2005/968, art 3(a)(ii).

Date in force (for remaining purposes): 1 October 2005: see SI 2005/2714, art 2(a)(i).

[27B Co-operation between Council and other authorities]

[(1) This section imposes duties on—

(a) the Authority and the Council;

(b) the Council and the Secretary of State; and

(c) the Council and the Assembly.

(2) It shall be the duty of the bodies mentioned in each paragraph of subsection (1) above to make arrangements with a view to securing—

(a) co-operation and the exchange of information between them; and

(b) the consistent treatment of matters which affect both of them.

(3) As soon as practicable after agreement is reached on any arrangements required by this section, the parties shall prepare a memorandum setting them out.

(4) Arrangements under this section shall be kept under review by the parties.

(5) As soon as practicable after agreement is reached on any changes to arrangements under this section, the parties shall revise their memorandum.

(6) Parties to arrangements required by this section shall send a copy of their memorandum, and any revised memorandum, to each other person mentioned in subsection (1) above who is not a party to the arrangements set out in the memorandum (or revised memorandum).

(7) The Secretary of State shall lay a copy of every memorandum or revised memorandum under this section before each House of Parliament.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 35(1).

Date in force: 1 April 2006: see SI 2005/2714, art 4(b); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[General functions of the Council]

NOTES

Amendment

Inserted by the Water Act 2003, s 43(1).

Date in force: 1 October 2005: see SI 2005/2714, art 2(a)(ii), (c), (d), (f), (g), (m)(i); for transitional provisions see art 5(1), Schedule, paras 3, 8 thereto.

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[27C The interests of consumers]

[(1) In considering the interests of consumers, the Council 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.

(2) For the purposes of subsection (1) above, premises are not eligible to be supplied by a licensed water supplier if—

(a) they are household premises (as defined in section 17C above); or

(b) the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 43(1).

Date in force: 1 October 2005: see SI 2005/2714, art 2(c).

[27D Acquisition and review of information]

[The Council shall have the function of obtaining and keeping under review—

(a) information about consumer matters (including matters affecting consumers in different areas); and

(b) information about the views of consumers on such matters (including the views of consumers in different areas).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 43(1).

Date in force: 1 October 2005: see SI 2005/2714, art 2(c).

[27E Provision of advice and information to public authorities]

[(1) The Council shall have the function of—

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(a) making proposals, or providing advice and information, about consumer matters (including matters affecting consumers in different areas); and

(b) representing the views of consumers on such matters (including the views of consumers in different areas),

to public authorities, companies holding an appointment under Chapter 1 of this Part, licensed water suppliers and other persons whose activities may affect the interests of consumers.

(2) Subject to subsection (7) below, information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

(3) Information relating to a particular individual or body may be disclosed if—

(a) the individual or body has consented to the disclosure;

(b) it is information that is available to the public from some other source; or

(c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to disclose any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—

(a) consult that individual or body; and

(b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its disclosure;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) Subject to subsection (7) below, the Council shall not in the exercise of its function under this section disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

(7) Subsections (2) to (5) above do not apply to a disclosure of information which is made to the Authority, the Secretary of State, the Assembly, the [CMA] or any other public authority.

(8) The disclosure by the Council of information in the exercise of its function under this section does not contravene section 206 below (restriction on disclosure of information).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 43(1).

Date in force: 1 October 2005: see SI 2005/2714, art 2(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

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Sub-s (7): reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 82.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

[27F Provision of information to consumers]

[(1) The Council has the function of providing information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.

(2) That function may be exercised by—

(a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or

(b) furnishing information to any consumer (whether in response to a request or otherwise).

(3) Information may only be disclosed in the exercise of that function if it is information that is available to members of the public from some other source.

(4) The Council shall maintain at least one office in each of England and Wales at which consumers may apply for information.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 43(1).

Date in force: 1 October 2005: see SI 2005/2714, art 2(c).

[27G Power to publish information and advice about consumer matters]

[(1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.

(2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published in the exercise of the Council’s function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

(3) Information relating to a particular individual or body may be published if—

(a) the individual or body has consented to the publication;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—

(a) consult that individual or body; and

(b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;

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and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

(7) The publication of information under this section does not contravene section 206 below (restriction on disclosure of information).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 43(1).

Date in force: 1 October 2005: see SI 2005/2714, art 2(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[27H Provision of information to the Council]

[(1) The Council may direct—

(a) the Authority;

(b) a company holding an appointment under Chapter 1 of this Part; or

(c) a licensed water supplier,

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.

(2) A body to whom a direction under this section is given shall, if the information specified or described in the direction is in its possession, comply with the direction as soon as reasonably practicable.

(3) Before giving a direction under this section and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body to whom the direction is given.

(4) If a body to whom a direction under this section is given fails to comply with the direction it shall, if so required by the Council, give notice to the Council of the reasons for its failure.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 44.

Date in force: 1 October 2005: see SI 2005/2714, art 2(d); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[27I Publication of notice of reasons]

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[(1) Subject to the following provisions of this section, the Council may publish a notice given to it under section 27H(4) above.

(2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under subsection (1) above unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

(3) Information relating to a particular individual or body may be published if—

(a) that individual or body has consented to the publication;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—

(a) consult that individual or body; and

(b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

(7) The publication by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 44.

Date in force: 1 October 2005: see SI 2005/2714, art 2(d); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[27J Provision of information by the Council]

[(1) Any of—

(a) the Authority;

(b) the Secretary of State; or

(c) the Assembly,

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may direct the Council to supply to him or it, in such form as he or it may reasonably specify, such information specified or described in the direction as he or it may require for the purpose of exercising his or its functions.

(2) The Council shall, if the information specified or described in the direction is in its possession, comply with a direction under this section as soon as reasonably practicable.

(3) Where the Council fails to comply with a direction given under subsection (1) above it must give to the person who gave the direction notice of its reason for the failure, and that person may publish that notice in such manner as he considers appropriate.

(4) A person publishing a notice under this section shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 44.

Date in force: 1 October 2005: see SI 2005/2714, art 2(d); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[27K Sections 27H to 27J: supplementary]

[(1) The Secretary of State may make regulations prescribing—

(a) descriptions of information which a person to whom a direction is given under section 27H or 27J above may refuse to supply; or

(b) circumstances in which such a person may refuse to comply with a direction given under either of those sections.

(2) The Council may, if no person is prescribed for the purpose under subsection (3) below, refer a failure by a company holding an appointment or a licensed water supplier to comply with a direction under section 27H above to the Authority.

(3) The Secretary of State may make regulations for the purpose of enabling a failure to comply with a direction under section 27H or 27J above to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.

(4) A person to whom such a failure is referred (whether under subsection (2) above or regulations under subsection (3) above) shall—

(a) consider any representations made by either party;

(b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and

(c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.

(5) The duty of a company holding an appointment and a licensed water supplier to comply with an order under this section shall be enforceable by the Authority under section 18 above.

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(6) A notice under subsection (4) above may be published by either party to the reference.

(7) Subsections (2) to (7) of section 27I above apply to the publication of a notice under this section as they apply to the publication of a notice given to the Council under section 27H(4) above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 44.

Date in force: 1 October 2005: see SI 2005/2714, art 2(d); for transitional provisions see art 5(1), Schedule, para 8 thereto.

28 . . .

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 35(4), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(a)(ii), (m)(i).

[29 Consumer complaints]

[(1) This section applies to a complaint which any person ("the complainant") has against a relevant undertaker or a licensed water supplier in relation to any matter connected with the functions of that undertaker or the services provided by that licensed water supplier.

(2) Where a complaint to which this section applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsections (3) and (8) below) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (9) below.

(3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under section 181 below, the Council shall, instead of investigating the matter to which it relates, refer the complaint to the Authority.

(4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under section 18 or 22A above is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.

(5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence, the Council shall refer the matter—

(a) to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales or to services provided by a licensed water supplier using the supply system of a water undertaker whose area is wholly or mainly in Wales

; or

(b) to the Secretary of State, in any other case.

(6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Act, the Council shall, if the complainant consents, refer the matter to the Authority.

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(7) A referral under subsection (6) above shall have effect for the purposes of section 30A below as if it were a referral by the complainant of a dispute for determination by the Authority.

(8) The Council is not required to investigate any matter if it appears to the Council that—

(a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker or the licensed water supplier;

(b) the relevant undertaker or the licensed water supplier has not been given a reasonable opportunity to deal with the complaint; or

(c) in a case mentioned in subsection (4) or (5) above or (where the complainant does not consent to the matter being referred to the Authority) subsection (6) above, it is inappropriate to do so.

(9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the complainant to the relevant undertaker or the licensed water supplier about anything to which the complaint relates.

(10) After investigating a complaint the Council may make a report to the Authority, the Secretary of State or the Assembly.

(11) A report under subsection (10) above may include information about—

(a) any representations made by the Council under subsection (9) above; and

(b) the response of the relevant undertaker or the licensed water supplier to the complaint or any such representations.

(12) No report under subsection (10) above or information about a complaint referred to the Council under this section, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority, the Secretary of State or the Assembly in the exercise of any power under this Act without the consent of the complainant.

(13) Where a representation made to the Authority, the Secretary of State or the Assembly about any matter (other than a representation appearing to the person to whom it is made to be frivolous or vexatious) appears to that person—

(a) to be about a matter which is or amounts to a complaint to which this section applies (other than one which, in the case of the Authority, it is its duty to investigate under section 181 below); and

(b) to have been made by or on behalf of the complainant,

that person shall refer the matter to the Council.]

NOTES

Derivation

This section as originally enacted derived as follows: sub-ss (1)–(4) derived from the Water Act 1989, s 27(1); sub-ss (5), (6) derived from the Water Act 1989, s 27(3), (4).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Water Act 2003, s 46(1).

Date in force: 1 October 2005: see SI 2005/2714, art 2(f); for transitional provisions see art

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5(1), Schedule, paras 3, 8 thereto.

[29A Power of Council to investigate other matters]

[(1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.

(2) Before undertaking an investigation under this section the Council shall consult the Authority, the Secretary of State and the Assembly.

(3) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the [CMA], the Assembly or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.

(4) Subject to subsection (5) below, the Council may—

(a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and

(b) publish any such report in such manner as the Council thinks appropriate.

(5) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—

(a) shall not be included in a report which is to be sent to any person under subsection (4)(a) above, unless one or more of paragraphs (a) to (c) of subsection (6) below applies; and

(b) shall be excluded from any such report which is to be published under subsection (4)(b) above, unless one or more of paragraphs (a) to (c) of subsection (7) below applies.

(6) Information relating to a particular individual or body may be included in a report to be sent under subsection (4)(a) above if—

(a) that individual or body has consented to the disclosure;

(b) it is information that is available to the public from some other source; or

(c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

(7) Information relating to a particular individual or body may be included in a report to be published under subsection (4)(b) above if—

(a) that individual or body has consented to the publication;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

(8) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (6)(c) or (7)(c) above, the Council shall—

(a) consult that individual or body; and

(b) have regard to any opinion expressed by the Authority as to the application of subsection (6)(c) or (7)(c) above to the information or as to the desirability or otherwise of its inclusion in

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the report;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(9) The Council shall not include in any report to be sent under subsection (4)(a) above or published under subsection (4)(b) above any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(10) In considering whether information relates to any matter as mentioned in subsection (9) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 47.

Date in force: 1 October 2005: see SI 2005/2714, art 2(g); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 83.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

30 . . .

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 46(2), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(f), (m)(i); for savings see art 5(1), Schedule, paras 3, 8 thereto.

[Further functions of Authority]

NOTES

Amendment

Inserted by the Water Act 2003, s 43(2).

Date in force: 1 October 2005: see SI 2005/2714, art 2(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[30ZA Duty to consult Council]

[(1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—

(a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or

(b) the Authority considers that it would be clearly inappropriate to consult the Council.

(2) That duty is in addition to any duty on the Authority to consult the Council which is provided for

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elsewhere.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 43(2).

Date in force: 1 October 2005: see SI 2005/2714, art 2(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[30ZB Copies of notices]

[Where the Authority is required by any provision of this Act to publish a notice or any other document, it shall send a copy of the document to the Council.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 43(2).

Date in force: 1 October 2005: see SI 2005/2714, art 2(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[30A Determination of disputes by [the Authority]]

[(1) In this section "relevant dispute" means a dispute which, by virtue of any provision of this Act, may be referred to [the Authority] for determination under this section.

(2) The practice and procedure to be followed in connection with the reference to [the Authority] of any relevant dispute shall be such as [it] considers appropriate.

(3) Where [the Authority] determines any dispute under this section [it] shall give [its] reasons for reaching [its] decision with respect to the dispute.

(4) On making a determination under this section [the Authority] may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by [the Authority]) as [it] considers appropriate.

(5) A determination under this section—

(a) shall be final; and

(b) shall be enforceable as if it were a judgment of [the county court], in so far as it includes such provision as to costs or expenses as is mentioned in subsection (4) above.

(6) [The Authority] shall not determine any relevant dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.

(7) In including in any determination under this section any provision as to costs or expenses, [the Authority] shall have regard to the conduct and means of the parties and any other relevant circumstances.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 34.

Section heading: words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Words "the Authority", "it", "its" and "The Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): in para (b) words "the county court" in square brackets substituted by the Crime and Courts Act 2013, s 17(5), Sch 9, Pt 3, para 52(1)(b), (2).

Date in force: 22 April 2014: see SI 2014/954, art 2(a), (c); for transitional provision see art 3.

Provisions with respect to competition

31 Functions of [Authority] with respect to competition

(1) . . .

[(2) The functions to which subsection (2A) below applies shall be concurrent functions of [the Authority] and the [CMA].

(2A) This subsection applies to the functions of the [CMA] under Part 4 of the 2002 Act (other than sections 166[, 171 and 174E]) so far as [those functions—

(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

(b) relate to] commercial activities connected with the supply of water or the provision of sewerage services.]

[(3) [The Authority] shall be entitled to exercise, concurrently with the [CMA], the functions of the [CMA] under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6)[, 40B(1) to (4)] and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,

(b) conduct of the kind mentioned in section 18(1) of that Act,

(c) agreements, decisions or concerted practices of the kind mentioned in [Article 101(1) of the Treaty on the Functioning of the European Union], or

(d) conduct which amounts to abuse of the kind mentioned in [Article 102 of the Treaty on the Functioning of the European Union],

which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.]

[(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) [above—

(a) references] in Part 4 of the 2002 Act to the [CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to [the Authority] (except in sections 166[, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise [requires);

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(b) references in that Part to section 5 of the 2002 Act are to be construed as including references to section 27(1) and (2) of this Act].]

[(4ZA) Section 130A of the 2002 Act is to have effect in its application in relation to the Authority by virtue of subsections (2) and (2A)—

(a) as if for subsection (1) of that section there were substituted—

"(1) Where the Water Services Regulation Authority—

(a) is proposing to carry out its functions under section 27(1) and (2) of the Water Industry Act 1991 in relation to a matter for the purposes mentioned in subsection (2), and

(b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Authority must publish a notice under this section (referred to in this Part as a "market study notice").", and

(b) as if in subsection (2)(a) of that section, for "the acquisition or supply of goods or services of one or more than one description in the United Kingdom" there were substituted "commercial activities connected with the supply of water or the provision of sewerage services (within the meaning given by section 219(1) of the Water Industry Act 1991)".]

[(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to [the CMA] are to be read as including a reference to [the Authority] ([except in sections 31D(1) to (6), 38(1) to (6)][, 40B(1) to (4)], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

[(5) Before the [CMA] or [the Authority] first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(6) Neither the [CMA] nor [the Authority] shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]

(7) It shall be the duty of [the Authority], for the purpose of assisting [a CMA group] in carrying out an investigation on a [market investigation reference made by the Authority (under section 131 of the 2002 Act)] by virtue of subsection (2) . . . above, to give to the [group]—

(a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the [group] for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the [group] without any such request; and

(b) any other assistance which the [group] may require, and which it is within his power to give, in relation to any such matters;

and the [group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

[(7A) In subsection (7) "CMA group" has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

(8) If any question arises as to whether subsection (2) or (3) above [. . .] applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall

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be taken to anything done under—

(a) [Part 4 of the 2002 Act]; or

[(b) Part I of the Competition Act 1998 ([other than sections 31D(1) to (6), 38(1) to (6)][, 40B(1) to (4)] and 51),]

by or in relation to [the Authority] on the ground that it should have been done by or in relation to [the CMA].

[(8A) Section 117 of the 2002 Act (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by [the Authority] by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the [CMA] included references to [the Authority].]

(9) . . .

NOTES

Derivation

This section derived from the Water Act 1989, s 28.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: word “Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): repealed by the Enterprise Act 2002, s 278, Sch 25, para 25(1), (8)(a), Sch 26.

Date in force: 1 April 2003: see SI 2003/766, art 2, Schedule; for transitional and transitory provisions and savings see the Enterprise Act 2002, s 276, Sch 24, paras 2–6.

Sub-ss (2), (2A): substituted, for sub-s (2) as originally enacted, by the Enterprise Act 2002, s 168(9), Sch 9, Pt 2, para 19(1), (2).

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see art 4 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 13–19.

Sub-s (2): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (2).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (2A): reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (3)(a).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (2A): words “, 171 and 174E” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (3)(b).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (2A): words from “those functions—” to “(b) relate to” in square brackets substituted by SI

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2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (3)(c).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (3): substituted by SI 2004/1261, reg 5, Sch 2, para 4(1), (2)(a).

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b).

Sub-s (3): words "The Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): reference to "CMA" in square brackets in both places it occurs substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (4).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (3): words ", 40B(1) to (4)" in square brackets inserted by the Enterprise and Regulatory Reform Act 2013, s 57, Sch 15, paras 4, 5.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(b), (f); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (3): in para (c) words "Article 101(1) of the Treaty on the Functioning of the European Union" in square brackets substituted by SI 2012/1809, art 3(1), Schedule, Pt 1.

Date in force: 1 August 2012 (except in its application to things done before 1 December 2009, being the date on which the Treaty of Lisbon came into force): see SI 2012/1809, art 2.

Sub-s (3): in para (d) words "Article 102 of the Treaty on the Functioning of the European Union" in square brackets substituted by SI 2012/1809, art 3(1), Schedule, Pt 1.

Date in force: 1 August 2012 (except in its application to things done before 1 December 2009, being the date on which the Treaty of Lisbon came into force): see SI 2012/1809, art 2.

Sub-s (4): substituted by the Enterprise Act 2002, s 168(9), Sch 9, Pt 2, para 19(1), (3).

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see art 4 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 13–19.

Sub-s (4): words "above— (a) references" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (5)(a).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4): in para (a) reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (5)(b).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4): in para (a) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (a) words ", 171 and 174E" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (5)(c).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4): words from "requires);" to "of this Act" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 84(1), (5)(d).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4ZA): inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (6).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4A): inserted by the Competition Act 1998, s 54(2), Sch 10, para 5(8).

Date in force (for certain purposes): 26 November 1998: see SI 1998/2750, art 2(1)(b).

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Date in force (for remaining purposes): 1 March 2000: see SI 2000/344, art 2, Schedule.

Sub-s (4A): words “the CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (7).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4A): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4A): words “except in sections 31D(1) to (6), 38(1) to (6)” in square brackets substituted by SI 2004/1261, reg 5, Sch 2, para 4(1), (2)(b).

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b).

Sub-s (4A): words “, 40B(1) to (4)” in square brackets inserted by the Enterprise and Regulatory Reform Act 2013, s 57, Sch 15, paras 4, 5.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(b), (f); for transitional provisions and savings see art 2(2), Schedule.

Sub-ss (5), (6): substituted by the Enterprise Act 2002, s 168(9), Sch 9, Pt 2, para 19(1), (4).

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see art 4 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 13–19.

Sub-s (5): reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (8).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-ss (5), (6): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (8).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (7): words “the Authority” in square brackets in both places they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (7): words “a CMA group” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (9)(a)(i).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (7): words “market investigation reference made by the Authority (under section 131 of the 2002 Act)” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (9)(a)(ii).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (7): words omitted repealed by the Competition Act 1998, ss 54(2), 74(3), Sch 10, para 5(11), Sch 14, Pt I.

Date in force (for certain purposes): 26 November 1998: see SI 1998/2750, art 2(1)(b).

Date in force (for remaining purposes): 1 March 2000: see SI 2000/344, art 2, Schedule.

Sub-s (7): word “group” in square brackets in each place it occurs substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (9)(b).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (7A): inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (10).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

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Sub-s (8): words omitted inserted by the Deregulation and Contracting Out Act 1994, s 7(2), Sch 2, para 10(4).

Sub-s (8): words omitted repealed by the Enterprise Act 2002, ss 168(9), 278(2), Sch 9, Pt 2, para 19(1), (5)(a), Sch 26.

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see art 4 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 13–19.

Sub-s (8): in para (a) words "Part 4 of the 2002 Act" in square brackets substituted by the Enterprise Act 2002, s 168(9), Sch 9, Pt 2, para 19(1), (5)(b).

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see art 4 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 13–19.

Sub-s (8): para (b) substituted by the Competition Act 1998, s 54(2), Sch 10, para 5(12).

Date in force (for certain purposes): 26 November 1998: see SI 1998/2750, art 2(1)(b).

Date in force (for remaining purposes): 1 March 2000: see SI 2000/344, art 2, Schedule.

Sub-s (8): in para (b) words "other than sections 31D(1) to (6), 38(1) to (6)" in square brackets substituted by SI 2004/1261, reg 5, Sch 2, para 4(1), (2)(c).

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b).

Sub-s (8): in para (b) words ", 40B(1) to (4)" in square brackets inserted by the Enterprise and Regulatory Reform Act 2013, s 57, Sch 15, paras 4, 5.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(b), (f); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (8): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (8): words "the CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (11).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (8A): substituted (as inserted by the Competition Act 1998, s 54(3), Sch 10, para 13(8)) by the Enterprise Act 2002, s 168(9), Sch 9, Pt 2, para 19(1), (6).

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see art 4 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 13–19.

Sub-s (8A): words "the Authority" in square brackets in both places they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (8A): reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 84(1), (12).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (9): repealed by the Enterprise Act 2002, ss 168(9), 278(2), Sch 9, Pt 2, para 19(1), (7), Sch 26.

Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see art 4 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 2–6, 13–19.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

[32 Duty to refer merger of water or sewerage undertaking]

[Subject to section 33 below, it shall be the duty of the [CMA to make a reference to its chair for the

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constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes] that it is or may be the case—

(a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or

(b) that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.]

NOTES

Derivation

This section derived from the Water Act 1989, s 29(1), (3), (4).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Enterprise Act 2002, s 70(1).

Date in force: 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 1–11, 13, 15–19.

Words from "CMA to make" to "the CMA believes" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 85.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

[33 Exclusion of small mergers from duty to make reference]

[(1) The [CMA] shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the [CMA]—

(a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or

(b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.

(2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—

(a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or

(b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.

(3) For the purposes of subsection (1)(b) above—

(a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and

(b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.

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(4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.

(5) Regulations under subsection (4) above may, in particular, make provision as to—

(a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and

(b) the date or dates by reference to which an enterprise's turnover is to be determined.

(6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the [CMA] to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).

[(6A) The CMA must—

(a) keep under review the conditions set out in subsection (1)(a) and (b), and

(b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.]

(7) The Secretary of State may by regulations amend subsection (1) above so as—

(a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or

(b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.

(8) Regulations under subsection (7) above—

(a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and

(b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.

(9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.]

NOTES

Derivation

This section derived from the Water Act 1989, s 29(3), (5), (6), (10).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Enterprise Act 2002, s 70(1).

Date in force: 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 1–11, 13, 15–19.

Sub-s (1): reference to "CMA" in square brackets in both places it occurs substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 86.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (6): reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 86.

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Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (6A): inserted by the Water Act 2014, s 15.

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(c).

Subordinate Legislation

Water Mergers (Determination of Turnover) Regulations 2004, SI 2004/3206 (made under sub-ss (4)–(6)).

[34 Application of provisions of Enterprise Act 2002]

[The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.]

NOTES

Derivation

This section derived from the Water Act 1989, s 30(1)–(5).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Enterprise Act 2002, s 70(1).

Date in force: 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 1–11, 13, 15–19.

[35 Construction of merger provisions]

[(1) In this Chapter (including Schedule 4ZA)—

"enterprise" has the same meaning as in Part 3 of the 2002 Act; and

"water enterprise" means an enterprise carried on by a [relevant undertaker].

(2) References in this Chapter (including Schedule 4ZA), in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part 3 of the 2002 Act, to be distinct enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.

(3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the [CMA] or the Secretary of State, in a case in which, or to any extent to which, the [CMA] is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.

(4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.

(5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the [CMA] is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.]

NOTES

Derivation

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Sub-s (1) derived from the Water Act 1989, ss 29(2), (9), 30(6); sub-s (2) derived from the Water Act 1989, s 29(9); sub-s (3) derived from the Water Act 1989 s 30(6); sub-s (4) derived from the Water Act 1989, s 29(8).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Enterprise Act 2002, s 70(1).

Date in force: 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 1–11, 13, 15–19.

Sub-s (1): in definition "water enterprise" words "relevant undertaker" in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (2).

Date in force: 29 December 2004: see SI 2004/2528, art 3.

Sub-s (3): reference to "CMA" in square brackets in both places it occurs substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 87.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (5): reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 87.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

[Disclosure of arrangements for remuneration]

NOTES

Amendment

Inserted by the Water Act 2003, s 50.

Date in force: 1 October 2004: see SI 2004/2528, art 2(g); for transitional provisions see art 4(1), Schedule, para 4 thereto.

[35A Remuneration and standards of performance]

[(1) This section applies to any company holding an appointment under Chapter 1 of this Part.

(2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—

(a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3) below; and

(b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.

(3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.

(4) A description under subsection (2)(b) above must include in particular—

(a) a statement of when the arrangements were made;

(b) a description of the standards of performance in question;

(c) an explanation of the means by which the standards of performance are assessed; and

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(d) an explanation of how the remuneration was calculated.

(5) The statement required by subsection (2) above must also state—

(a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3) above; or

(b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,

and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.

(6) A description under subsection (5) above must—

(a) include in particular the matters listed in subsection (4)(a), (b) and (c) above; and

(b) where the arrangements described are different from any arrangements described under subsection (2)(b) above, state the likely effect of those differences on the remuneration of each director of the company.

(7) The statement required by subsection (2) above must be made to the Authority in such manner as may be required by the Authority.

(8) The statement required by subsection (2) above—

(a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and

(b) may be published by the Authority in such manner as it may consider appropriate.

(9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.

(10) In this section—

"remuneration" in relation to a director of a company—

(a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and

(b) includes remuneration in respect of any of his services while a director of the company;

"standards of performance", in relation to any company, include any standards which are—

(a) set by or under any conditions of the company's appointment under Chapter 1 of this Part;

(b) contained in or prescribed by regulations made under section 38(1)(b) or (2) or section 95(1)(b) or (2) below; or

(c) set or agreed to by the company.

(11) Any requirement imposed by this section shall be treated as a statutory requirement enforceable under section 18 above by the Authority.]

NOTES

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Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 50.

Date in force: 1 October 2004: see SI 2004/2528, art 2(g); for transitional provisions see art 4(1), Schedule, para 4 thereto.

See Further

See further, in relation to the application of sub-ss (1), (10) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 9.

Chapter IV
Interpretation of Part II

36 Interpretation of Part II

(1) In this Part—

. . .

"the 1980 Act" means the Competition Act 1980;

["the 2002 Act" means the Enterprise Act 2002].

(2) References in this Part to an appointment or variation replacing a company as a relevant undertaker are references to the following, that is to say—

(a) the appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker; or

(b) a variation by virtue of which the area for which a company holds an appointment under Chapter I of this Part is modified so as to include the whole or any part of an area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker.

(3) For the purposes of this Part premises in a part of an area are served by a company holding an appointment under Chapter I of this Part—

(a) in relation to an appointment or variation by virtue of which that company would be replaced as the water undertaker for that part of that area, if those premises—

(i) are supplied with water by means of a connection with a distribution main of that company; or

(ii) . . .

and

(b) in relation to an appointment or variation by virtue of which that company would be replaced as the sewerage undertaker for that part of that area, if those premises—

(i) are drained by means of a relevant sewer [or drain]; or

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(ii) . . .

(4) In this section—

"distribution main" means a water main that is not a trunk main; and

["relevant sewer or drain", in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following, that is to say—

(a) a public sewer or lateral drain vested in that company;

(b) a sewer or lateral drain in relation to which that company has made a declaration of vesting under section 102 below which has not yet taken effect;

(c) a sewer or lateral drain in relation to which that company has entered into an agreement under section 104 below].

NOTES

Derivation

Sub-s (2) derived from the Water Act 1989, s 12(1), (6); sub-ss (3), (4) derived from the Water Act 1989, s 12(5), (6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): definition "the 1973 Act" (omitted) repealed by the Enterprise Act 2002, ss 86(5), 164(2), 278(2), Sch 9, Pt 1, para 8(a), Sch 26.

Date in force: 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 13–19.

Sub-s (1): definition "the 2002 Act" inserted by the Enterprise Act 2002, ss 86(5), 164(2), Sch 9, Pt 1, para 8(b).

Date in force: 20 June 2003: see SI 2003/1397, art 2(1), Schedule.

Sub-s (3): paras (a)(ii), (b)(ii) repealed by the Competition and Service (Utilities) Act 1992, ss 40(5), 56(7), Sch 2.

Sub-s (3): in para (b)(i) words "or drain" in square brackets inserted by the Water Act 2003, s 97(1), (2)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): definition "relevant sewer or drain" substituted, for definition "relevant sewer" as originally enacted, by the Water Act 2003, s 97(1), (2)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

[Part 2A
Regulation of Provision of Infrastructure]

NOTES

Amendment

Inserted by the Flood and Water Management Act 2010, s 35(1).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 1 October 2010: see SI 2010/2169, art 4, Schedule.

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Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

[36A Regulations]

[(1) The Minister may make regulations about the provision of infrastructure for the use of water undertakers or sewerage undertakers.

(2) The regulations may in particular—

(a) confer regulatory functions on the Authority;

(b) apply provisions of Part 2 with or without modification;

(c) make provision similar to a provision of Part 2.

(3) The regulations must specify the activities to which they apply; in particular, the regulations may—

(a) apply to designing, constructing, owning and operating infrastructure, and

(b) define "infrastructure".

(4) The regulations—

(a) may make provision only in relation to projects or works that in the Minister's opinion are of a size or complexity that threatens the undertaker's ability to provide services for its customers, and

(b) in conferring powers, must restrict them to projects or works that, in the opinion of the person exercising the power, are of a size or complexity that threatens the undertaker's ability to provide services for its customers.

(5) Sections 36B to 36D and 36F specify other kinds of provision that the regulations may make; and in those sections "infrastructure project" means a project, or part of a project, in connection with any of the things specified in subsection (3)(a).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 35(1).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Subordinate Legislation

Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582.

Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2015, SI 2015/22.

[36B Tendering]

[(1) Regulations under section 36A may—

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(a) allow the Minister to specify one or more infrastructure projects which must be put out to tender;

(b) allow the Authority to specify one or more infrastructure projects which must be put out to tender;

(c) allow the Minister to delegate the power under paragraph (a) to the Authority.

(2) The regulations must prohibit a water undertaker or sewerage undertaker from undertaking an infrastructure project which is to be put out to tender in accordance with the regulations.

(3) But the regulations may permit or require a water or sewerage undertaker to undertake preparatory work of a specified kind or for a specified purpose.

(4) The regulations must make provision about the extent to which companies associated with a water undertaker or sewerage undertaker (as defined by the regulations) are permitted to bid in a tender process.

(5) The regulations must specify the procedure to be followed in a tender process; in particular, the regulations—

(a) may require the undertaker to consult the Authority or the Minister about the terms on which an infrastructure project is put out to tender;

(b) may specify factors to be taken into account in considering bids;

(c) must provide for the water or sewerage undertaker responsible for the tender process to determine which bid to accept (if any).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 35(1).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Subordinate Legislation

Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582.

[36C Criteria for tendering]

[(1) Regulations under section 36A must specify criteria to be used by the Minister or the Authority in determining whether to exercise a power by virtue of section 36B(1).

(2) The regulations may—

(a) provide that the Authority must consult the Minister before exercising a power by virtue of section 36B(1);

(b) require the Authority to publish guidance to be followed by it in determining whether to exercise a power by virtue of section 36B(1).]

NOTES

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Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 35(1).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Subordinate Legislation

Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582.

[36D Designation as an infrastructure provider]

[(1) Regulations under section 36A may enable the Minister or the Authority to designate as an "infrastructure provider" a person who appears to the Minister or Authority to be wholly or partly responsible for an infrastructure project that was put out to tender in accordance with regulations by virtue of section 36B.

(2) The regulations may—

(a) confer powers and impose duties on designated infrastructure providers (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act on water or sewerage undertakers),

(b) confer powers and impose duties on the Authority, the Minister or any other body with public functions (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act in respect of water or sewerage undertakers),

(c) relieve water or sewerage undertakers of specified duties to a specified extent,

(d) provide for designation to be conditional,

(e) provide, or enable the provision of, limits (by reference to place, time or otherwise) on powers and duties conferred under paragraph (a),

(f) include provision about enforcement of powers, duties, conditions and limitations, and

(g) include provision for variation or revocation of designation.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 35(1).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Subordinate Legislation

Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582.

[36E Ministerial responsibility]

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[(1) In this Part "the Minister" means—

(a) the Secretary of State, in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers,

(b) the Welsh Ministers, in relation to infrastructure which is provided or to be provided for the use of one or more Welsh undertakers, and

(c) the Secretary of State and the Welsh Ministers acting jointly in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers and one or more Welsh undertakers.

(2) In this section and section 36F—

(a) "an English undertaker" means a water undertaker or sewerage undertaker whose area is wholly or mainly in England, and

(b) "a Welsh undertaker" means a water undertaker or sewerage undertaker whose area is wholly or mainly in Wales.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 35(1).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Subordinate Legislation

Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582.

[36F Cross-border infrastructure projects]

[(1) Regulations under section 36A may make provision about cross-border infrastructure projects.

(2) In this section "cross-border infrastructure project" means an infrastructure project which—

(a) relates to infrastructure in Wales which is for the use of an English undertaker, or

(b) relates to infrastructure in England which is for the use of a Welsh undertaker.

(3) Regulations made by the Secretary of State about cross-border infrastructure projects—

(a) may confer functions on the Welsh Ministers, and

(b) must require the Secretary of State or the Authority to consult the Welsh Ministers before exercising any power under section 36B(1) to specify projects which must be put out to tender.

(4) Regulations made by the Welsh Ministers about cross-border infrastructure projects—

(a) may confer functions on the Secretary of State, and

(b) must require the Welsh Ministers or the Authority to consult the Secretary of State before

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exercising any power under section 36B(1) to specify projects which must be put out to tender.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 35(1).

Date in force (for certain purposes): 1 October 2010: see SI 2010/2169, art 4, Schedule.
Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Subordinate Legislation

Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582.

[36G Regulations: procedure]

[(1) Regulations under section 36A may not be made unless a draft has been laid before and approved by resolution of—

(a) each House of Parliament, in the case of regulations made by the Secretary of State,

(b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers, or

(c) each House of Parliament and the National Assembly for Wales, in the case of regulations made by the Secretary of State and the Welsh Ministers acting jointly.

(2) Before laying a draft under subsection (1) the Minister must consult persons who in the Minister's opinion represent interests likely to be affected by the regulations.

(3) Section 213 applies to regulations made by the Welsh Ministers under section 36A as it applies to regulations made by the Secretary of State.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 35(1).

Date in force (in relation to water or sewerage undertakers whose areas are wholly or mainly in England): 1 October 2010: see SI 2010/2169, art 4, Schedule.
Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Subordinate Legislation

Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582.

Part III
Water Supply

Chapter I
General Duties of Water Undertakers

37 General duty to maintain water supply system etc

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(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 Authority].

(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.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 37; sub-s (3) derived from the Water Act 1989, s 38(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): in para (b) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to statutory undertakers: the Water Resources Act 1991, s 19.

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 10(1).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[37A Water resources management plans: preparation and review]

[(1) It shall be the duty of each water undertaker to prepare[, publish] and maintain a water resources

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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 licensed water suppliers);

(c) the likely sequence and timing for implementing those measures; and

(d) such other matters as the Secretary of State may specify in directions;

[(and see also section 37AA)].

(4) The procedure for preparing [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 [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).

(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[, if the plan (or revised plan) would affect water resources in England];

[(aa) the NRBW, if the plan (or revised plan) would affect water resources in Wales;]

(b) the Authority;

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(c) the Secretary of State; and

(d) any licensed water supplier which supplies water to premises in the undertaker's area via the undertaker's supply system.

[(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.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 62.

Date in force (for the purpose of enabling the Secretary of State to make regulations and give directions in relation to drought plans under ss 37B, 39B hereof): 1 October 2004: see SI 2004/2528, art 2(j).

Date in force (for remaining purposes): 1 April 2006: see SI 2006/984, art 2(q).

Sub-s (1): word ", publish" in square brackets inserted by the Water Act 2014, s 28(1), (2)(a).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Sub-s (3): words "(and see also section 37AA)" in square brackets inserted by the Water Act 2014, s 27(1), (2).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Sub-s (4): words "and publishing" in square brackets inserted by the Water Act 2014, s 28(1), (2)(b).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Sub-s (6): words "and publish" in square brackets inserted by the Water Act 2014, s 28(1), (2)(c).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Sub-s (8): in para (a) words ", if the plan (or revised plan) would affect water resources in England;" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 229(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (8): para (aa) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 229(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-ss (9), (9A): substituted, for sub-s (9) as originally enacted, by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 229(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

[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.

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(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.]

NOTES

Amendment

Inserted by the Water Act 2014, s 27(1), (3).
Date in force: 14 July 2014: see the Water Act 2014, s 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;

(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

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(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 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

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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.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 62.

Date in force (for the purpose of enabling the Secretary of State to make regulations and give directions in relation to drought plans under this section and s 39B hereof): 1 October 2004: see SI 2004/2528, art 2(j).

Date in force (for remaining purposes): 1 October 2005: see SI 2005/2714, art 2(i); for transitional provisions see SI 2006/984, art 3(1), Schedule, para 8(1).

Subordinate Legislation

Drought Plan Regulations 2005, SI 2005/1905 (made under sub-ss (3), (5), (6), (8)).

Water Resources Management Plan Regulations 2007, SI 2007/727 (made under sub-ss (3)(a), (c), (5), (6), (8)(a)).

[37C Water resources management plans: provision of information]

[(1) It shall be the duty of each licensed water supplier 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 licensed water supplier 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.

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(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 licensed water supplier pursuant to subsection (1) above; and

(b) contained in the water undertaker's draft water resources management plan,

which the licensed water supplier has (at the time of providing it to the water undertaker) specifically identified as being, in the licensed water supplier'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 licensed water supplier 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.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 62.

Date in force (for the purpose of enabling the Secretary of State to make regulations and give directions in relation to drought plans under ss 37B, 39B hereof): 1 October 2004: see SI 2004/2528, art 2(j).

Date in force (for remaining purposes): 1 April 2007: see SI 2007/1021, art 2(a).

[37D Water resources management plans: supplementary]

[(1) Directions given under section 37A[, 37AA] or 37B 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.

(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 licensed water supplier under section 37C above,

shall be enforceable by the Secretary of State under section 18 above.]

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[(4) The Minister may by order made by statutory instrument amend the period for the time being specified in section 37A(6)(c).

(5) In subsection (4), "the Minister" means—

(a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and

(b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.

(6) A statutory instrument containing an order made by the Secretary of State under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) A statutory instrument containing an order made by the Welsh Ministers under subsection (4) is subject to annulment in pursuance of a resolution of the Assembly.

(8) Subsection (9) applies in relation to a statutory instrument containing both—

(a) an order made by the Secretary of State under subsection (4), and

(b) an order made by the Welsh Ministers under subsection (4).

(9) If in accordance with subsection (6) or (7) (negative resolution procedure)—

(a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or

(b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,

the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 62.

Date in force (for the purpose of enabling the Secretary of State to make regulations and give directions in relation to drought plans under ss 37B, 39B hereof): 1 October 2004: see SI 2004/2528, art 2(j).

Date in force (for remaining purposes): 1 April 2006: see SI 2006/984, art 2(q).

Sub-s (1): reference to ", 37AA" in square brackets inserted by the Water Act 2014, s 27(1), (4).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Sub-ss (4)–(9): inserted by the Water Act 2014, s 28(1), (3).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

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

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(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 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 undertaker is to be exempted from requirements of the regulations.

[(5) Where [the Authority] determines any dispute in accordance with regulations under this section [it] shall, in such manner as may be specified in the regulations, give [its] reasons for reaching [its] decision with respect to the dispute.]

NOTES

Derivation

This section derived from the Water Act 1989, s 38(1)–(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (4): in paras (b), (c) words "the Authority" and "the Authority's" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): inserted by the Competition and Service (Utilities) Act 1992, s 56(6), Sch 1, para 18.

Sub-s (5): words "the Authority", "it" and "its" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales

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(Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, SI 2008/594 (made under sub-ss (2)–(4)).

[38A Information with respect to levels of performance]

[(1) [The Authority] shall from time to time collect information with respect to—

(a) the compensation paid by water undertakers under regulations under section 38(2) above; and

(b) the levels of overall performance achieved by water undertakers in connection with the provision of water supplies.

(2) At such times as [the Authority] may direct, each water undertaker shall give the following information to [the Authority]—

(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.

(3) A water undertaker who without reasonable excuse fails to do anything required of him by subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

(4) [The Authority] shall, at least once in every year, arrange for the publication, in such form and in such manner as [it] considers appropriate, of such of the information collected by or given to [it] under this section as it may appear to [it] expedient to give to customers or potential customers of water undertakers.

(5) In arranging for the publication of any such information [the Authority] 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 Authority], 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 Authority], seriously and prejudicially affect the interests of that body.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 27.

Words "The Authority", "the Authority" and "it" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): substituted by the Water Act 2014, s 29(2), (5).

Date in force (for certain purposes): 1 January 2015: see SI 2014/3320, art 2(2)(a).

Date in force (for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

[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 licensed water suppliers and the handling of such complaints.

(2) In subsection (1) above, "complaints" includes complaints made directly to water undertakers or licensed water suppliers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 45(1).

Date in force: 1 October 2005: see SI 2005/2714, art 2(e); for transitional provisions see art 5(1), Schedule, para 8 thereto.

39 Procedure for regulations under section 38

[(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) [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) the Secretary of State is satisfied that a copy of the application has been served by [the Authority]—

(i) on every water undertaker specified in the application; . . .

(ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;

[(iii) on the Council; and

(iv) on such other persons or bodies as the Secretary of State may consider appropriate;]]

(c) such period as the Secretary of State considers appropriate has been allowed for the making—

(i) by [the Authority]; and

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(ii) by any affected water undertaker [or person or body on whom a copy of the application has been served under paragraph [(b)] above],

of representations or objections with respect to [the Authority's] proposals and any modifications proposed by the Secretary of State; and

(d) the Secretary of State has considered [the summary mentioned in subsection (2)(bb) below,] [the Authority's] reasons for [its] 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.

[(1A) Before making an application to the Secretary of State under this section [the Authority] shall arrange for such research as [it] 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 Authority] to the Secretary of State complies with this subsection if it—

(a) sets out [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 [the regulations] should apply;

[(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 Authority's] reasons for [its] proposals.

(3) The Secretary of State shall not make any regulations [on an application by the Authority under this section] except where—

(a) the only provisions of the regulations are [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 Authority's] proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—

(i) to [the Authority]; . . .

(ii) to any water undertaker appearing to the Secretary of State to be likely to be affected by the modifications[; and

(iii) to any person or body on whom a copy of the Authority's application was served under subsection (1)(b) above].

[(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—

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(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.]

NOTES

Derivation

This section derived from the Water Act 1989, s 38(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (A1): inserted by the Water Act 2003, s 41(1), (2).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): words from "Where the Authority" to "section 38 above if—" in square brackets substituted by the Water Act 2003, s 41(1), (3)(a).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): para (b) substituted by the Competition and Service (Utilities) Act 1992, ss 26(1), (2), 56(6), Sch 1, para 19.

Sub-s (1): words "the Authority", "the Authority's" and "its" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

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Sub-s (1): in para (b)(i) word omitted repealed by the Water Act 2003, ss 41(1), (3)(b), 101(2), Sch 9, Pt 2.

Date in force: 1 April 2005: see SI 2005/968, art 2(h), (n)(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): para (b)(iii), (iv) inserted by the Water Act 2003, s 41(1), (3)(b).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): in para (c)(ii) words from "or person or body" to "above" in square brackets inserted by the Competition and Service (Utilities) Act 1992, ss 26(1), (2), 56(6), Sch 1, para 19.

Sub-s (1): in para (c)(ii) reference to "(b)" in square brackets substituted by the Water Act 2003, s 41(1), (3)(c).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): in para (d) words "the summary mentioned in subsection (2)(bb) below," in square brackets substituted by the Competition and Service (Utilities) Act 1992, ss 26(1), (2), 56(6), Sch 1, para 19.

Sub-s (1A): inserted by the Competition and Service (Utilities) Act 1992, s 26(1), (3).

Sub-s (1A): words "the Authority" and "it" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "the Authority", "the Authority's" and "its" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (a) words "the Authority's proposals for the making of" in square brackets substituted by the Water Act 2003, s 41(1), (4)(a).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (2): in para (b) words "the regulations" in square brackets substituted by the Water Act 2003, s 41(1), (4)(b).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (2): para (bb) inserted by the Competition and Service (Utilities) Act 1992, s 26(1), (4).

Sub-s (3): words "on an application by the Authority under this section" in square brackets substituted by the Water Act 2003, s 41(1), (5)(a).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (3): in para (a) words from "those which in" to "to those proposals" in square brackets substituted by the Water Act 2003, s 41(1), (5)(b).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (3): in para (b) words "the Authority's" and "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): in para (b)(i) word omitted repealed by the Water Act 2003, ss 41(1), (5)(c), 101(2), Sch 9, Pt 2.

Date in force: 1 April 2005: see SI 2005/968, art 2(h), (n)(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (3): para (b)(iii) and word "; and" immediately preceding it inserted by the Water Act 2003, s 41(1), (5)(c).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-ss (4)–(8): inserted by the Water Act 2003, s 41(1), (6).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1),

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Sch 2, paras 3, 4 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[39A 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 Authority] may direct, take steps to inform its customers[, and, if the direction so specifies, licensed water suppliers 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.

(2) In giving any such direction, [the Authority] shall not specify a frequency of less than once in every period of twelve months.

[(2A) The licensed water suppliers referred to in subsection (1) above shall, if the 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 section 17B(5) above.]

(3) The duty of a water undertaker [or licensed water supplier] to comply with this section shall be enforceable by [the Authority] under section 18 above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 28.

Sub-s (1): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words from ", and, if the direction" to "or those customers," in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 13(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (2A), (2B): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 13(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s

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101(1), Sch 8, paras 2, 13(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[39B Drought plans: preparation and review]

[(1) It shall be the duty of each water undertaker to prepare[, 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 licensed water suppliers);

(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 [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 [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—

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(a) the Environment Agency[, if the plan (or revised plan) would affect water resources in England];

[(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 licensed water supplier which supplies water to premises in the undertaker's area via the undertaker's supply system.

(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.

[(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.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 63.

Date in force (for the purpose of enabling the Secretary of State to make regulations and give directions in relation to drought plans under this section and s 37B hereof): 1 October 2004: see SI 2004/2528, art 2(j).

Date in force (for remaining purposes): 1 October 2005: see SI 2005/2714, art 2(j); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): word ", publish" in square brackets inserted by the Water Act 2014, s 28(1), (4)(a).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Sub-s (6): words "and publish" in square brackets inserted by the Water Act 2014, s 28(1), (4)(b)(i).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Sub-s (6): in para (c) words "five years" in square brackets substituted by the Water Act 2014, s

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28(1), (4)(b)(ii).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Sub-s (7): in para (a) words ", if the plan (or revised plan) would affect water resources in England" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 230(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (7): para (aa) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 230(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-ss (11), (11A): substituted, for sub-s (11) as originally enacted, by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 230(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Subordinate Legislation

Drought Plan Regulations 2005, SI 2005/1905 (made under sub-s (5)).

[39C Drought plans: provision of information]

[(1) It shall be the duty of each licensed water supplier 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 licensed water supplier 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 licensed water supplier pursuant to subsection (1) above; and

(b) contained in the water undertaker's draft drought plan,

which the licensed water supplier has (at the time of providing it to the water undertaker) specifically identified as being, in the licensed water supplier'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 licensed water supplier 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 licensed water supplier and a water undertaker under this section shall be enforceable by the Secretary of State under section 18 above.]

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NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 63.

Date in force (for the purpose of enabling the Secretary of State to make regulations and give directions in relation to drought plans under ss 37B, 39B hereof): 1 October 2004: see SI 2004/2528, art 2(j).

Date in force (for remaining purposes): 1 October 2005: see SI 2005/2714, art 2(j).

[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.]

NOTES

Amendment

Inserted by the Water Act 2014, s 28(1), (5).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(g).

Chapter II
Supply Duties

Major supplies

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[40 Bulk supplies]

[(1) Where, on the application of any qualifying person—

(a) it appears to [the Authority] that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the water undertaker specified in the application ("the supplier") should give a supply of water in bulk to the applicant, and

(b) [the Authority] is satisfied that the giving and taking of such a supply cannot be secured by agreement,

[the Authority] may by order require the supplier to give and the applicant to take such a supply for such period and on such terms and conditions as may be provided in the order.

(2) In this section "qualifying person" means—

(a) a water undertaker; or

(b) a person who has made an application for an appointment or variation under section 8 above which has not been determined.

(3) Where the application is made by a person who is a qualifying person by virtue of subsection (2)(b) above, an order made under this section in response to that application shall be expressed not to come into force until the applicant becomes a water undertaker for the area specified in the order, or for an area which includes that area.

(4) Subject to subsection (3) above, an order under this section shall have effect as an agreement between the supplier and the applicant.

[(5) The Authority shall not make an order under this section unless it has first consulted—

(a) the Environment Agency, if the order applies to a supply of water that would affect water resources in England;

(b) the NRBW, if the order applies to a supply of water that would affect water resources in Wales.]

(6) In exercising his functions under this section, [the Authority] shall have regard to the desirability of—

(a) facilitating effective competition within the water supply industry;

(b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;

(c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;

(d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.]

NOTES

Derivation

This section as originally enacted derived from the Water Act 1989, s 39.

Extent

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This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with s 40A, by the Competition and Service (Utilities) Act 1992, s 44.

Sub-ss (1), (6): words "the Authority", "The Authority" and "it" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 231.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

[40A Variation and termination of bulk supply agreements]

[(1) This section applies where, on the application of any party to a bulk supply agreement—

(a) it appears to [the Authority] that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, to vary the agreement or to terminate it, and

(b) [the Authority] is satisfied that that cannot be achieved by agreement between the parties to the agreement.

(2) [The Authority] may by order—

(a) vary the agreement by—

(i) varying the period for which the supply of water is to be given; or

(ii) varying any of the terms or conditions on which that supply is to be given; or

(b) terminate the agreement.

[(3) Before making any order under this section the Authority shall consult—

(a) the Environment Agency, if the order applies to a bulk supply agreement that would affect water resources in England;

(b) the NRBW, if the order applies to a bulk supply agreement that would affect water resources in Wales.]

(4) Where an order is made under this section the agreement concerned shall have effect subject to the provision made by the order or (as the case may be) shall cease to have effect.

(5) An order under this section may require the payment of compensation by any party to the agreement to any other party.

(6) The obligations of a water undertaker under subsection (5) above shall be enforceable under section 18 above by [the Authority].

(7) In exercising [its] functions under this section, [the Authority] shall have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement and to the desirability of—

(a) facilitating effective competition within the water supply industry;

(b) the supplier's recovering the expenses of complying with its obligations by virtue of this

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section and securing a reasonable return on its capital;

(c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;

(d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.

(8) In this section—

"bulk supply agreement" means an agreement between one or more water undertakers for the supply of water in bulk and includes—

(a) an order under section 40 above which is deemed to be an agreement by virtue of subsection (4) of that section; and

(b) any agreement which has been varied by order under this section; and

"supplier", in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with s 40, for s 40 as originally enacted, by the Competition and Service (Utilities) Act 1992, s 44.

Sub-ss (1), (2), (6), (7): words "the Authority", "The Authority" and "its" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 232.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

41 Duty to comply with water main requisition

(1) It shall be the duty of a water undertaker (in accordance with section 44 below) to provide a water main to be used for providing such supplies of water to premises in a particular locality in its area as (so far as those premises are concerned) are sufficient for domestic purposes, if—

(a) the undertaker is required to provide the main by a notice served on the undertaker by one or more of the persons who under subsection (2) below are entitled to require the provision of the main for that locality;

(b) the premises in that locality to which those supplies would be provided by means of that main are—

(i) premises consisting in buildings or parts of buildings; or

(ii) premises which will so consist when proposals made by any person for the erection of buildings or parts of buildings are carried out;

and

(c) the conditions specified in section 42 below are satisfied in relation to that requirement.

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(2) Each of the following persons shall be entitled to require the provision of a water main for any locality, that is to say—

(a) the owner of any premises in that locality;

(b) the occupier of any premises in that locality;

(c) any local authority within whose area the whole or any part of that locality is situated;

[(ca) where the whole or any part of that locality is situated within a Mayoral development area, the Mayoral development corporation;]

(d) where the whole or any part of that locality is situated in a new town, within the meaning of the New Towns Act 1981—

(i) the [new towns residuary body]; and

(ii) . . . the development corporation for the new town. . .;

and

(e) where the whole or any part of that locality is situated within an area designated as an urban development area under Part XVI of the Local Government, Planning and Land Act 1980, the urban development corporation.

(3) The duty of a water undertaker under this section to provide a water main shall be owed to the person who requires the provision of the main or, as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of subsection (3) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(5) In this section "local authority", in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 40(1), (2); sub-s (3) derived from the Water Act 1989, s 40(6); sub-s (4) derived from the Water Act 1989, s 40(6), (7); sub-s (5) derived from the Water Act 1989, s 40(8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): para (ca) inserted by the Localism Act 2011, s 222, Sch 22, paras 39, 40.
Date in force: 15 January 2012: see the Localism Act 2011, s 240(1)(l).

Sub-s (2): in para (d)(i) words "new towns residuary body" in square brackets substituted by the Housing and Regeneration Act 2008, s 56, Sch 8, paras 55, 56.
Date in force: 1 December 2008: see SI 2008/3068, arts 1(2), 2(1)(w), (3); for transitional provisions and savings see arts 6–13 thereof.

Sub-s (2): in para (d)(ii) words omitted repealed by the Government of Wales Act 1998, s 152, Sch

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18, Pt IV.

Date in force: 1 October 1998: see SI 1998/2244, art 4.

42 Financial conditions of compliance

(1) The conditions mentioned in section 41(1)(c) above are satisfied in relation to a requirement for the provision of a water main by a water undertaker if—

(a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) below have been given by the person or persons who have required the provision of the main; and

(b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under subsection (3) below, may be required to secure his undertakings.

(2) The undertakings which a water undertaker may require for the purposes of subsection (1) above in respect of any water main are undertakings which—

[(a) bind the person or persons mentioned in that subsection to pay to the undertaker either (at the election of such person or persons)—

(i) in respect of each of the twelve years following the provision of the main, an amount not exceeding the relevant deficit (if any) for that year on that main; or

(ii) following provision of the main, a single amount not exceeding the discounted aggregate deficit on that main; and]

(b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

(3) For the purposes of subsection (1)(b) above a person may be required to secure his undertakings in relation to the provision of a water main if—

(a) it was by virtue of section 41(2)(a) or (b) above that he required, or joined in requiring, the provision of the main; and

(b) he is not a public authority.

(4) Where for the purposes of subsection (1)(b) above any sums have been deposited with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

(a) by the undertaker with the approval of [the Authority]; or

(b) in default of a determination under paragraph (a) above, by [the Authority],

on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.

(5) An approval or determination given or made by [the Authority] for the purposes of subsection (4) above—

(a) may be given or made in relation to the provision of a particular water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and

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(b) may be revoked at any time.

(6) Any dispute between a water undertaker and any other person as to—

(a) the undertakings or security required by the undertaker for the purposes of this section; or

(b) the amount required to be paid in pursuance of any such undertaking,

[may be referred to the Authority for determination under section 30A above by either party to the dispute].

[(7) In this section "relevant deficit" and "discounted aggregate deficit" have the meanings given by sections 43 and 43A below, respectively.]

NOTES

Derivation

Sub-ss (1), (3) derived from the Water Act 1989, s 41(1); sub-ss (2), (4)–(6) derived from the Water Act 1989, s 41(2), (8)–(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): para (a) substituted by the Water Act 2003, s 90(1), (2).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 90(5).

Sub-ss (4), (5): words "the Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): words from "may be referred" to "to the dispute" in square brackets substituted by the Water Act 2003, s 90(1), (3).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 90(5).

Sub-s (7): substituted by the Water Act 2003, s 90(1), (4).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 90(5).

43 Calculation of "relevant deficit" for the purposes of section 42

(1) For the purposes of section 42 above the relevant deficit for any year on a water main is the amount (if any) by which the [relevant revenue in respect of that main for that year is] exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.

(2) The annual borrowing costs of a loan of the amount required for the provision of a water main is the aggregate amount which would fall to be paid in any year by way of payments of interest and repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that main as were not incurred in the provision of additional capacity had been borrowed, by the water undertaker providing the main, on terms—

(a) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and

(b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined for the purposes of this subsection.

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(3) A determination for the purposes of subsection (2) above shall be made either—

(a) by the undertaker with the approval of [the Authority]; or

(b) in default of such a determination, by [the Authority].

(4) For the purposes of this section the costs reasonably incurred in providing a water main ("the new main") shall include—

(a) the costs reasonably incurred in providing such other water mains and such tanks, service reservoirs and pumping stations as it is necessary to provide in consequence of the provision of the new main; and

(b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing [or procuring the provision of] any such additional capacity in an earlier main as falls to be used in consequence of the provision of the new main.

[(5) In subsection (4) above the reference to an earlier main, in relation to the new main, is a reference to any water main which—

(a) has been provided in pursuance of a water main requisition; or

(b) has been vested (by virtue of a declaration made under this Chapter) in the water undertaker,

in the period of twelve years immediately before the provision of the new main.]

(6) Any reference in this section to the provision of additional capacity in a water main provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that main as are carried out or done for the purpose of enabling that main to be used for purposes in addition to those for which it is necessary to provide the main in order to comply with the requirement.

[(7) Any reference in this section to the relevant revenue in respect of a main provided by a water undertaker for any year is—

(a) in relation to premises connected with the main which are supplied with water by the undertaker, is a reference to so much of the aggregate of any charges payable to the undertaker in respect of services provided in the course of that year as represents charges which—

(i) have been imposed by the undertaker in relation to those premises; and

(ii) are reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main;

(b) in relation to premises connected with the main which are supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges made during the course of that year which—

(i) are payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and

(ii) are reasonably attributable to the use of that main for the purpose of the supplier supplying water to those premises.]

(8) An approval or determination given or made by [the Authority] for the purposes of subsection (2) above—

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(a) may be given or made in relation to the provision of a particular water main, in relation to the provision of mains of a particular description or in relation to the provision of water mains generally; and

(b) may be revoked at any time except in relation to a water main [in respect of which the conditions referred to in section 42(1) above have already been satisfied].

(9) In this section "water main requisition" means—

(a) a requirement under section 41 above (including, by virtue of paragraph 1 of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 40 of the Water Act 1989);

(b) a requirement under the provisions of section 36 or 37 of the Water Act 1945 or of section 29 of Schedule 3 to that Act (water main requisitions); or

(c) a requirement under any local statutory provision corresponding to section 41 above or to any of those provisions of that Act of 1945.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 41(3); sub-ss (2), (3) derived from the Water Act 1989, s 41(4); sub-ss (4), (5), (9) derived from the Water Act 1989, s 41(5); sub-ss (6), (7), (8) derived from the Water Act 1989, s 41(6), (7), (9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "relevant revenue in respect of that main for that year is" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 14(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-ss (3), (8): words "the Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (b) words "or procuring the provision of" in square brackets inserted by the Water Act 2003, s 91(1)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Sub-s (5): substituted by the Water Act 2003, s 91(1)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Sub-s (7): substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 14(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (8): in para (b) words from "in respect of" to "already been satisfied" in square brackets substituted by the Water Act 2003, s 91(1)(c).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

[43A Calculation of "discounted aggregate deficit" for the purposes of section 42]

[(1) For the purposes of section 42 above the discounted aggregate deficit on a water main is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the

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provision of the main, in each case discounted in accordance with subsection (6) below.

(2) The estimated relevant deficit for any year is the amount (if any) by which the estimated revenue in respect of the water main for that year would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that main.

(3) Subsections (2) to (6), (8) and (9) of section 43 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a water main) shall apply for the purposes of this section as they apply for the purposes of that.

(4) Any reference in this section to the estimated revenue in respect of a water main for any year—

(a) in relation to premises expected to be connected with the main and supplied with water by a water undertaker, is a reference to so much of the aggregate of any charges expected to be payable to the undertaker for the provision of services in the course of that year as would represent charges—

(i) imposed by the undertaker in relation to those premises, and

(ii) reasonably attributable to the provision of a supply of water (whether or not for domestic purposes) to those premises by means of that main; and

(b) in relation to premises expected to be connected with the main and supplied with water by a licensed water supplier, is a reference to so much of the aggregate of any charges expected to be made during the course of that year as would be—

(i) payable by the supplier to the undertaker in respect of the duty under section 66A(2)(b), 66B(3)(b) or 66C(2)(b)(ii) below; and

(ii) reasonably attributable to the use of that main for the purpose of the supplier's supplying water to those premises.

(5) For the purpose of calculating estimated revenue under subsection (4) above, a thing is expected to be the case if, at the time the calculation is made, it is reasonably likely to occur.

(6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.

(7) A determination made by the Authority for the purposes of subsection (6) above—

(a) may be made in relation to the provision of a particular water main or in relation to the provision of water mains generally; and

(b) may be revoked at any time except in relation to a water main in respect of which the conditions referred to in section 42(1) above have already been satisfied.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 91(2).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

44 Determination of completion date and route for requisitioned main

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(1) A water undertaker shall not be in breach of a duty imposed by section 41 above in relation to any locality unless—

(a) the period of three months beginning with the relevant day has expired; and

[(b) the water undertaker has not, before the end of that period, so laid the water main to be provided as to enable (as the case may be)—

(i) service pipes to premises in that locality; or

(ii) a water main which is the subject of an agreement under section 51A below ("the self-laid main"),

to connect with the main at the place or places determined under subsection (3) below].

(2) The period mentioned in subsection (1)(a) above may be extended in any case—

(a) by agreement between the water undertaker and the person or persons who required the provision of the main; or

(b) where there is a dispute as to whether the period should be extended, by [the Authority] on a reference under subsection (4) below.

(3) The places mentioned in subsection (1)(b) above shall be—

(a) such places as are determined by agreement between the water undertaker and the person or persons who required the provision of the water main; or

(b) in default of agreement, such places as are determined by [the Authority], on a reference under subsection (4) below, to be the places at which it is reasonable, in all the circumstances, for service pipes to premises in the locality in question[, or (as the case may be) the self-laid main,] to connect with the water main.

[(4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.]

(5) In this section "relevant day", in relation to a requirement to provide a water main . . ., means the day after whichever is the later of the following, that is to say-—

(a) the day on which the conditions specified in section 42 above are satisfied in relation to the requirement; and

[(b) the day on which the place or places where (as the case may be)—

(i) service pipes to premises in the locality in question; or

(ii) the self-laid main,

will connect with the main are determined under subsection (3) above].

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 40(3); sub-ss (3)–(5) derived from the Water Act 1989, s 40(4), (5), (8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

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Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): para (b) substituted by the Water Act 2003, s 91(3)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Sub-s (2): in para (b) words "the Authority" in square brackets substituted by the Water Act 2003, s 91(3)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Sub-s (3): in para (b) words "the Authority" in square brackets substituted by the Water Act 2003, s 91(3)(c)(i).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Sub-s (3): in para (b) words ", or (as the case may be) the self-laid main," in square brackets inserted by the Water Act 2003, s 91(3)(c)(ii).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Sub-s (4): substituted by the Water Act 2003, s 91(3)(d).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Sub-s (5): words omitted repealed by the Water Act 2003, ss 91(3)(e)(i), 101(2), Sch 9, Pt 3.

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Sub-s (5): para (b) substituted by the Water Act 2003, s 91(3)(e)(ii).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 91(4).

Domestic connections

45 Duty to make connections with main

(1) Subject to the following provisions of this section and to sections 46 and 47 below, it shall be the duty of a water undertaker (in accordance with section 51 below) to make a connection under this section where the owner or occupier of any premises . . . which—

(a) consist in the whole or any part of a building; or

(b) are premises on which any person is proposing to erect any building or part of a building,

serves a notice on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker's water mains.

[(1A) In relation to service pipes which do not belong to or fall to be laid by the undertaker—

(a) subsection (1) above is subject to section 51D(1) below; and

(b) any such service pipe which is to vest in the undertaker by virtue of an agreement under section 51A below shall be connected to one of the undertaker's water mains subject to and in accordance with the terms of that agreement.]

(2) Where a notice has been served for the purposes of this section, the duty imposed by subsection (1) above shall be a duty, at the expense of the person serving the notice, to make the connection required by the notice if—

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(a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and

(b) such conditions as the undertaker may have imposed under sections 47 to 50 below have been satisfied;

and, subject to section 51 below, that duty shall arise whether or not the service pipe to which the notice relates has been laid when the notice is served.

(3) A notice for the purposes of this section—

(a) shall be accompanied or supplemented by all such information as the undertaker may reasonably require; and

(b) if the notice has effect so that a requirement is imposed on the undertaker by virtue of section 46(4) below, shall set out the matters that have given rise to the imposition of that requirement;

but, subject to section 51(5) below and without prejudice to the effect (if any) of any other contravention of this subsection, a failure to provide information in pursuance of the obligation to supplement such a notice shall not invalidate that notice.

(4) The duty imposed on a water undertaker by this section shall be owed to the person who served the notice by virtue of which the duty arises.

(5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(6) Where a water undertaker carries out any works which it is its duty under this section to carry out at another person's expense, the undertaker shall be entitled to recover from that person an amount equal to the expenses reasonably incurred by the undertaker in carrying out the works.

[(6A) Any dispute between a water undertaker and any other person as to whether the expenses were incurred reasonably may be referred to [the Authority] for determination under section 30A above by either party to the dispute.]

(7) Nothing in this section or in sections 46 to 51 below shall impose any duty on a water undertaker to connect a service pipe to any premises with a service pipe to any other premises.

(8) In the following provisions of this Chapter a notice served for the purposes of this section is referred to as a connection notice.

NOTES

Derivation

Sub-ss (1), (2), (7) derived from the Water Act 1989, s 42(1), (2), (5); sub-s (3) derived from the Water Act 1989, ss 42(1), 176; sub-s (4) derived from the Water Act 1989, s 44(1); sub-s (5) derived from the Water Act 1989, s 44(1), (4); sub-s (6) derived from the Water Act 1989, s 44(5)

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

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This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words omitted repealed by the Competition and Service (Utilities) Act 1992, ss 43(1), 56(7), Sch 2.

Sub-s (1A): inserted by the Water Act 2003, s 92(2).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

Sub-s (6A): inserted by the Competition and Service (Utilities) Act 1992, s 35(1), (2).

Sub-s (6A): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

46 Duty to carry out ancillary works for the purpose of making domestic connection

(1) Where a water undertaker is required to make a connection in pursuance of any connection notice, it shall also be the duty of the undertaker, at the expense of the person serving the notice, to carry out such of the works to which this section applies as need to be carried out before the connection can be made.

(2) This section applies to the laying of so much of the service pipe to be connected with the water main as it is necessary, for the purpose of making that connection, to lay in a street.

(3) In a case where—

(a) the water main with which the service pipe is to be connected is situated in a street;

(b) the premises consisting in the building or part of a building in question together with any land occupied with it abut on the part of the street where the main is situated; and

(c) the service pipe to those premises will—

(i) enter the premises otherwise than through an outer wall of a building abutting on the street; and

(ii) have a stopcock fitted to it by the undertaker in the premises,

this section applies to the laying of so much of the service pipe as it is necessary, for the purpose of making the required connection, to lay in land between the boundary of the street and that stopcock.

(4) In a case where the connection notice is served in compliance with a requirement imposed by a notice by a local authority under section 80 below, this section applies to the laying of so much of the service pipe to be connected with a water main in pursuance of the connection notice as it is necessary, for the purpose of making the connection, to lay in land owned or occupied by a person who is certified by that authority—

(a) to have unreasonably refused his consent to the laying of the service pipe; or

(b) to have sought to make the giving of his consent subject to unreasonable conditions.

(5) Where a water main is alongside a street and within eighteen metres of the middle of that street, subsections (2) to (4) above shall have effect in relation to the laying, for the purpose of making a connection with that main, of a service pipe to any premises as if the street included so much of the land between the main and the boundary of the street as is not comprised in those premises or in any land occupied with those premises.

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(6) It shall be the duty of any water undertaker making a connection in pursuance of a connection notice to ensure that a stopcock belonging to the undertaker is fitted to the service pipe which is connected.

(7) Subsections (4) to [(6A)] of section 45 above shall have effect—

(a) in relation to any duties which, by virtue of a connection notice, are imposed on a water undertaker by this section; and

(b) in relation to any works which, by virtue of the service of such a notice, such an undertaker carries out under this section at another person's expense,

as they have effect by virtue of that notice in relation to the duty which arises under that section or, as the case may be, to works which the undertaker carries out under that section at another person's expense.

(8) Subject to subsection (9) below, a water undertaker may comply with any duty under this section to lay a service pipe by laying a water main instead; but nothing in section 45 above or this section shall impose any duty on a water undertaker to lay a water main where it has no power to lay a service pipe.

(9) Where a water undertaker exercises its power under subsection (8) above to lay a water main instead of a service pipe—

(a) paragraph (a) of section 51(1) below shall have effect as if any additional time reasonably required by reason of the laying of the main instead of the service pipe were included in the time allowed by that paragraph for the laying of the service pipe; but

(b) the expenses recoverable by virtue of section 45(6) and subsection (7) above shall not exceed such amount as it would have been reasonable for the undertaker to have incurred in laying a service pipe instead of the main.

NOTES

Derivation

Sub-ss (1)–(4), (6) derived from the Water Act 1989, s 42(3); sub-s (5) derived from the Water Act 1989, s 42(4); sub-s (7) derived from the Water Act 1989 s 44(1), (4), (5); sub-s (8) derived from the Water Act 1989 s 42(5); sub-s (9) derived from the Water Act 1989, s 44(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (7): reference to "(6A)" in square brackets substituted by the Competition and Service (Utilities) Act 1992, s 35(1), (3).

47 Conditions of connection with water main

(1) Subject to subsection (3) and sections 48 to 50 below, where the owner or occupier of any premises ("the relevant premises") serves a connection notice on a water undertaker, the undertaker may make compliance with one or more of the requirements specified in subsection (2) below a condition of its complying with the duties to which it is subject by virtue of that notice.

(2) The requirements mentioned in subsection (1) above are—

(a) a requirement that such security as the undertaker may reasonably require has been provided for the discharge of any obligations imposed by virtue of section 45(6) or 46(7)(b)

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above on the person who served the connection notice;

(b) a requirement, in a case where the connection required by the connection notice is necessary as a consequence of a disconnection made by reason of any person's failure to pay any charges, that the person serving the connection notice has paid any amount owed by him to the undertaker—

(i) in respect of a supply of water to the relevant premises; or

(ii) in respect of expenses [reasonably] incurred in the making of the disconnection;

(c) a requirement that a meter for use in determining the amount of any charges which have been or may be fixed in relation to the relevant premises by reference to volume has been installed and connected either—

(i) by the undertaker; or

(ii) in accordance with specifications approved by the undertaker;

(d) a requirement that—

[(i) subject to section 51D(1) below, so much of the service pipe to the relevant premises as does not belong to, vest in or fall to be laid by the undertaker; and]

(ii) the plumbing of the premises,

comply with specifications approved by the undertaker for the purpose of ensuring that it will be reasonably practicable for such a meter as is mentioned in paragraph (c) above to be installed and connected as so mentioned;

(e) a requirement that a separate service pipe has been provided—

(i) to each house or building on the relevant premises; or

(ii) where different parts of a building on the relevant premises are separately occupied, to each of those parts or to any of them;

(f) a requirement, in relation to the relevant premises—

(i) that such a requirement as may be imposed under section 66 below has been complied with; or

(ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that section, that the cistern and its float-operated valve are in good repair;

(g) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—

(i) the supply of water to the relevant premises; or

(ii) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this paragraph; and

(h) a requirement that every such step has been taken as has been specified in any notice

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served on any person under section 75 below in relation to the relevant premises.

[(2A) No condition shall be imposed by a water undertaker under subsection (2)(e) above unless it is reasonable to do so in order to ensure that the undertaker will be able to perform its functions, in relation to the supply of water to the relevant premises or any part of those premises, efficiently.]

(3) A condition shall not be imposed by a water undertaker under this section on a person who has served a connection notice except by a counter-notice served on that person before the end of the period of fourteen days beginning with the day after the service of the connection notice.

[(3A) Any dispute as to whether any requirement of a kind mentioned in subsection (2)(a), (b), (e) or (f) above has been complied with may be referred to [the Authority] for determination under section 30A above by either party to the dispute.

(3B) Any dispute between a water undertaker and any other person as to whether—

(a) any security required by a condition imposed under subsection (2)(a) above was reasonably required,

(b) the expenses referred to in subsection (2)(b)(ii) above were incurred reasonably, or

(c) in a particular case, subsection (2A) above prevents a water undertaker from imposing a condition under subsection (2)(e) above,

may be referred to [the Authority] for determination under section 30A above by either party to the dispute.]

(4) This section shall be without prejudice to the provisions of sections 233 and 372 of the Insolvency Act 1986 (conditions of supply after insolvency).

NOTES

Derivation

Sub-ss (1), (2), (4) derived from the Water Act 1989, s 43(1); sub-s (3) derived from the Water Act 1989, s 43(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): in para (b)(ii) word “reasonably” in square brackets inserted by the Competition and Service (Utilities) Act 1992, s 51(1), (2).

Sub-s (2): para (d)(i) substituted by the Water Act 2003, s 92(3).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

Sub-ss (2A), (3A), (3B): inserted by the Competition and Service (Utilities) Act 1992, s 51(1), (3), (4).

Sub-ss (3A), (3B): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

48 Interest on sums deposited in pursuance of the deposit condition

(1) Where for the purposes of subsection (2)(a) of section 47 above any sums have been deposited

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with a water undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

(a) by the undertaker with the approval of [the Authority]; or

(b) in default of a determination under paragraph (a) above, by [the Authority],

on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.

(2) An approval or determination by [the Authority] for the purposes of this section—

(a) may be given or made in relation to a particular case or description of cases or generally; and

(b) may be revoked at any time.

NOTES

Derivation

This section derived from the Water Act 1989, s 43(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Words “the Authority” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

49 Supplemental provisions with respect to the metering conditions

(1) The power conferred on a water undertaker to impose conditions under section 47 above for the purposes of metering—

(a) shall be exercisable in relation to any premises even if the undertaker has no immediate intention, when the power is exercised, of fixing charges in relation to those premises by reference to volume; but

(b) shall not be exercisable so as to require the alteration or removal of any pipe laid or plumbing installed before 1st April 1989.

(2) Specifications approved by any water undertaker for the purposes of subsection (2)(c) or (d) of section 47 above may be approved—

(a) in relation to particular premises; or

(b) by being published in such manner as the undertaker considers appropriate, in relation to premises generally or to any description of premises.

[(3) Any dispute between a water undertaker and any other person as to the terms of any condition imposed under section 47 above for the purposes of metering shall be referred—

(a) to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person; or

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(b) if no agreement is reached, for determination by [the Authority] under section 30A above.]

(4) References in this section to the imposition of a condition under section 47 above for the purposes of metering are references to the imposition of conditions by virtue of subsection (2)(c) or (d) of that section.

NOTES

Derivation

Sub-ss (1)–(3) derived from the Water Act 1989, s 43(4)–(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): substituted by the Competition and Service (Utilities) Act 1992, s 35(1), (4).

Sub-s (3): in para (b) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

50 Restriction on imposition of condition requiring separate service pipes

(1) This section applies where the effect of a connection notice served in respect of any house is to require a service pipe to that house to be connected with a water main with which it has previously been connected.

(2) Where this section applies, the water undertaker on which the connection notice is served shall not be entitled to make the reconnection subject to any such condition as, apart from this section, may be imposed by virtue of section 47(2)(e) above unless the undertaker would have been entitled under section 64 below to require the provision of a separate service pipe if the reconnection had already been made.

NOTES

Derivation

This section derived from the Water Act 1989, s 43(7).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

51 Time for performance of connection etc duties

(1) A water undertaker shall not be in breach of a duty imposed by virtue of the service of a connection notice unless—

(a) in the case of a duty to lay any service pipe or to connect any service pipe to which such a duty relates, it has failed to lay that pipe or to make that connection as soon as reasonably practicable after the relevant day;

(b) in the case of a duty to connect a service pipe the whole of which has already been laid when the notice is served on the undertaker, it has failed to make the connection before the end of the period of fourteen days beginning with the relevant day.

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(2) In any case in which a water undertaker is subject to any such duty as is mentioned in subsection (1)(a) above, it shall be presumed, unless the contrary is shown in relation to that case, that the period of twenty-one days beginning with the relevant day is the period within which it is reasonably practicable for a water undertaker—

(a) to lay so much of any service pipe; and

(b) to fit such stopcock,

as it is necessary to lay or fit in that case for connecting a water main in a street with a service pipe at the boundary of any premises which abut on the part of the street where the main is situated.

(3) Where—

(a) a connection notice is served in respect of any premises; and

(b) at the time when the notice is served, the customer's part of the service pipe to those premises has not been laid,

the duties of the undertaker under sections 45 and 46 above shall not arise by virtue of that notice until the person serving the notice, having obtained the necessary consents from the owners and occupiers of any affected land, has, at his own expense, laid so much of the service pipe as it is necessary, for the purpose of making the connection, to lay otherwise than in a street or in land mentioned in subsections (3) to (5) of section 46 above.

(4) In subsection (3) above the reference to the customer's part of the service pipe to any premises is a reference to so much of the service pipe to those premises as falls to be laid otherwise than by the water undertaker in pursuance of section 46 above.

(5) Where—

(a) a person who has served a connection notice on a water undertaker has failed to comply with his obligation under section 45(3)(a) above to supplement that notice with information required by the undertaker; and

(b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required to comply with the duties imposed by virtue of the notice as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its compliance with those duties until a reasonable time after the required information is provided.

(6) In this section "the relevant day", in relation to a duty imposed on a water undertaker by virtue of a connection notice, means the day after whichever is the latest of the following days, that is to say—

(a) the day on which the notice was served on the undertaker;

(b) in a case where it is necessary for the person serving the notice to lay any service pipe after serving the notice, the day on which a notice stating that the pipe has been laid is served on the undertaker;

(c) the day on which all such conditions are satisfied as the undertaker has, under sections 47 to 50 above, made conditions of its compliance with that duty.

NOTES

Derivation

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Sub-ss (1), (2), (6) derived from the Water Act 1989, s 44(2), (3), (7); sub-ss (3), (4) derived from the Water Act 1989, s 42(6); sub-s (5) derived from the Water Act 1989, s 176.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

[Adoption of water mains and service pipes]

NOTES

Amendment

Inserted by the Water Act 2003, s 92(1).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

[51A Agreements to adopt water main or service pipe at future date]

[(1) Subject to subsections (2) and (10) below, a water undertaker may agree with any person constructing or proposing to construct—

(a) any water main; or

(b) any service pipe,

that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay, to be vested in that undertaker.

(2) Subsection (1) above shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—

(a) nothing in this section shall prevent a water undertaker from agreeing apart from this section to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and

(b) such a declaration shall take effect as a declaration made under this Chapter.

(3) A person constructing or proposing to construct a water main or a service pipe to which subsection (1) above applies may make an application in writing to a water undertaker requesting the undertaker to make an agreement under this section.

(4) An application under subsection (3) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but subject to subsection (5) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(5) Where—

(a) a person who has made an application to a water undertaker under subsection (3) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and

(b) that requirement was made by the undertaker at such a time before the end of the period

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within which the undertaker is required, by virtue of section 51B below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(6) In deciding whether or on what terms to grant an application under subsection (3) above, a water undertaker shall have regard in particular to any effect or potential effect on the quality of water supplies and to any increased danger to life or health which it considers may result.

(7) The terms of an agreement under subsection (1) above relating to a water main may, in particular, include terms—

(a) for the provision (at the expense of the person constructing or proposing to construct the water main) by—

(i) that person; or

(ii) the water undertaker,

of such associated infrastructure at or downstream of the point of connection with the undertaker's supply system as it is necessary to provide in consequence of incorporating the new water main into that system;

(b) providing that, if the water main and the associated infrastructure are constructed in accordance with the terms of the agreement, the undertaker will, in addition to declaring the water main to be vested in it, declare the associated infrastructure to be so vested;

(c) where the undertaker considers that the proposed main is, or is likely to be, needed for the provision of water supply services in addition to those for which the person is proposing to construct the main—

(i) requiring that person to construct the main in a manner differing, as regards material or size of pipes, depth or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it; and

(ii) providing for the repayment by the undertaker of any extra expense reasonably incurred by that person in complying with that requirement;

(d) for the connection of the new water main to the undertaker's existing supply system at the point or points specified in the agreement;

(e) for any service pipes which the person constructing or proposing to construct the new water main proposes to connect to that main to be constructed in accordance with the terms of the agreement and, subject to that, to be vested in the undertaker at the same time as the main.

(8) The terms of an agreement under subsection (1) above relating to a service pipe may, in particular, include terms—

(a) for the connection of the new service pipe to the undertaker's existing supply system at the point or points specified in the agreement;

(b) for such requirements of the kind referred to in section 47(2) above as may be applicable to be complied with before connection takes place.

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(9) An agreement made under this section by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.

(10) A water undertaker shall not make an agreement under this section with respect to a water main or a service pipe situated within the area of another water undertaker, until either—

(a) that other undertaker has consented in writing to the making of the agreement; or

(b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 92(1).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

[51B Appeals with respect to adoption]

[(1) Subject to section 51A(5) above, a person constructing or proposing to construct a water main or service pipe may appeal to the Authority where the water undertaker—

(a) has refused an application under section 51A above;

(b) has offered to grant such an application on terms to which that person objects; or

(c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.

(2) On the hearing of an appeal under this section, the Authority may—

(a) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or

(b) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application.

(3) Where the Authority makes an agreement under subsection (2)(b) above on behalf of a water undertaker, it may do so on such terms as it considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as it considers appropriate for ensuring that the terms of the agreement are reasonable.

(4) An agreement entered into on behalf of a water undertaker under subsection (2)(b) above shall be deemed, for the purposes of this Act, to have been entered into under section 51A above.

(5) In deciding on an appeal under this section, the Authority may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Authority) as it thinks fit, and any such provision as to costs or expenses shall be enforceable as if it were a judgment of [the county court].]

NOTES

Extent

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This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 92(1).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

Sub-s (5): words "the county court" in square brackets substituted by the Crime and Courts Act 2013, s 17(5), Sch 9, Pt 3, para 52(1)(b), (2).

Date in force: 22 April 2014: see SI 2014/954, art 2(a), (c); for transitional provision see art 3.

[51C Financial conditions of compliance]

[(1) This section applies where an agreement is, or is to be, entered into under section 51A above in relation to a water main ("the adopted main") by, or on behalf of, a water undertaker and a person constructing or proposing to construct that water main.

(2) Where this section applies, the water undertaker may, as a condition of the undertaker's compliance with the agreement, require that person to pay to it the costs mentioned in subsection (3) below.

(3) The costs are those reasonably incurred by the undertaker in connection with the adopted main equivalent to the costs referred to in section 43(4)(a) and (b) above, as if references there (and in section 43(5)) to the provision of the new main were references to the incorporation of the adopted main into the undertaker's supply system.

(4) For the purposes of any payment required to be made by virtue of subsection (2) above, the water undertaker may require the person to provide such security as it may reasonably request, and the provisions of subsections (4) and (5) of section 42 above shall apply to any security so required as they apply to security required under that section.

(5) Where this section applies, the water undertaker shall pay to the person referred to in subsection (1) above, upon declaring the water main to be vested in the undertaker, a sum equal to the discounted offset amount.

(6) For the purposes of subsection (5) above, the discounted offset amount is the sum of the estimated offsets for each of the twelve years following the vesting in the undertaker of the water main, in each case discounted in accordance with subsection (9) below.

(7) The estimated offset for any year is the lesser of—

(a) the estimated revenue (if any) in respect of the adopted main for that year; and

(b) the annual borrowing costs of a loan of the amount required for the provision of that main.

(8) The amounts referred to in paragraphs (a) and (b) of subsection (7) above shall be calculated in accordance with the provisions of subsections (3) to (5) of section 43A above as if the adopted main had been provided in pursuance of a water main requisition (as defined in section 43 above).

(9) The estimated offset for a year shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.

(10) A determination made by the Authority for the purposes of subsection (9) above—

(a) may be made in relation to a particular water main or in relation to water mains generally; and

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(b) may be revoked at any time except in relation to an adopted main in respect of which the agreement referred to in subsection (1) above has already been made.

(11) Any dispute between the water undertaker and the other person as to the payments required to be made or the security required to be provided by virtue of this section may be referred to the Authority for determination under section 30A above by either party to the dispute.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 92(1).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

[51D Prohibition on connection without adoption]

[(1) Where a person (other than a water undertaker) constructs a water main or service pipe which is to be used, in whole or in part, for supplying water for domestic or food production purposes, no water undertaker may permit that water main or service pipe to become connected with its supply system unless it vests (to the relevant extent) in a water undertaker.

(2) In subsection (1) above, "the relevant extent" means the extent specified in the agreement for the vesting in the undertaker of the water main or service pipe in question.

(3) The prohibition imposed on a water undertaker by subsection (1) above shall be enforceable under section 18 above by the Authority.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 92(1).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

[51E Sections 51A to 51D: supplementary]

[(1) For the purposes of sections 51A to 51D above, the definition of "water main" in section 219(1) below shall be treated as if the words "not being a pipe for the time being vested in a person other than the undertaker" were omitted.

(2) In sections 51A to 51C above, references to so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay shall be construed disregarding section 46(8) above.

(3) In this Act, references to vesting or the making of a declaration of vesting with respect to a service pipe refer to so much of the service pipe as is specified for those purposes in the relevant vesting agreement.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

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Inserted by the Water Act 2003, s 92(1).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

Domestic supplies

52 The domestic supply duty

(1) The domestic supply duty of a water undertaker in relation to any premises is a duty, until there is an interruption of that duty—

(a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and

(b) to maintain the connection between the undertaker's water main and the service pipe by which that supply is provided to those premises.

(2) Subject to the following provisions of this section and to section 53 below, a water undertaker shall owe a domestic supply duty in relation to any premises to which this section applies . . . if—

(a) a demand for a supply of water for domestic purposes has been made, in accordance with subsection (5) below, to the undertaker in respect of those premises; or

(b) those premises are premises to which this section applies by reason of a supply of water provided before 1st September 1989,

and there has been no interruption of the domestic supply duty in relation to those premises since that demand was made or, as the case may be, since the beginning of 1st September 1989.

(3) [Subject to subsection (4A) below,] this section applies to any premises if—

(a) they consist in the whole or any part of a building and are connected by means of a service pipe to [one of the water undertaker's water mains]; and

(b) the requirements of subsection (4) below are satisfied in relation to those premises.

(4) The requirements of this subsection are satisfied in relation to any premises if—

(a) the pipe by means of which the premises are connected to the water main in question was first connected with that main in pursuance of a connection notice served in respect of those premises;

(b) that pipe was the means by which a supply of water from that main was being supplied to those premises for domestic purposes immediately. before 1st September 1989;

(c) the condition specified in paragraph (b) above would be satisfied in relation to the premises if any service pipe to those premises had not been temporarily disconnected for the purposes of any necessary works which were being carried out immediately before 1st September 1989; or

(d) the condition specified in any of the preceding paragraphs—

(i) has been satisfied in relation to the premises at any time on or after 1st September 1989; and

(ii) would continue to be satisfied in relation to the premises had not the whole or any part of a service pipe to those premises, or the main with which such a

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pipe had been connected, been renewed (on one or more previous occasions).

[(4A) This section does not apply to any premises if—

(a) they are not in the area of the water undertaker;

(b) they are not household premises (as defined in section 17C above); and

(c) the total quantity of water estimated to be supplied to them annually for the purposes of subsection (2) of section 17D above is not less than the quantity specified in that subsection.]

(5) For the purposes of this section a demand in respect of any premises is made in accordance with this subsection if it is made—

(a) by the person who is the occupier of the premises at the time when the demand is made; or

(b) by a person who is the owner of the premises at that time and agrees with the undertaker to pay all the undertaker's charges in respect of the supply demanded.

(6) For the purposes of this section—

(a) there is an interruption of the domestic supply duty owed by a water undertaker in relation to any premises if that supply is cut off by anything done by the undertaker in exercise of any of its disconnection powers, other than a disconnection or cutting off for the purposes of the carrying out of any necessary works; and

(b) a domestic supply duty owed in relation to any premises shall not be treated as interrupted by reason only of a change of the occupier or owner of the premises.

[(6A) For the purposes of this section, there is also an interruption of the domestic supply duty owed by a water undertaker in relation to any premises where—

(a) a notice is served in respect of those premises under section 63AA below; and

(b) the time specified in that notice has passed.]

(7) Nothing in this section shall impose any duty on a water undertaker—

(a) to provide a supply of water directly from, or maintain any connection with, a water main which is a trunk main or is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; or

(b) to provide a supply of water to any premises, or maintain the connection between a water main and a service pipe to any premises, during any period during which it is reasonable—

(i) for the supply of water to those premises to be cut off or reduced; or

(ii) for the pipe to be disconnected,

for the purposes of the carrying out of any necessary works.

(8) In this section references to the disconnection powers of a water undertaker are references to the powers conferred on the undertaker by any of sections 60 to 62 and 75 below.

NOTES

Derivation

Sub-ss (1), (7) derived from the Water Act 1989, s 45(3), (5); sub-ss (2), (5) derived from the Water

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Act 1989, s 45(2); sub-ss (3), (4) derived from the Water Act 1989, s 45(1); sub-ss (6), (8) derived from the Water Act 1989, s 45(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words omitted repealed by the Competition and Service (Utilities) Act 1992, ss 41, 56(7), Sch 2.

Sub-s (3): words "Subject to subsection (4A) below," in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 15(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): in para (a) words "one of the water undertaker's water mains" in square brackets substituted by the Competition and Service (Utilities) Act 1992, s 56(6), Sch 1, para 20.

Sub-s (4A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 15(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (6A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 15(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

53 Conditions of compliance with domestic supply duty

(1) Where a demand for the purposes of section 52(2) above has been made to a water undertaker in respect of any premises ("the relevant premises"), the undertaker may make compliance with one or more of the requirements specified in subsection (2) below a condition of providing his first supply of water in compliance with that demand.

(2) The requirements mentioned in subsection (1) above are—

(a) a requirement, in a case where the demand is made as a consequence of a supply having been cut off by reason of any person's failure to pay any charges, that the person making the demand has paid any amount owed by him to the undertaker—

(i) in respect of a supply of water to the relevant premises; or

(ii) in respect of expenses [reasonably] incurred in cutting off any such supply;

(b) a requirement, in relation to the relevant premises

(i) that such a requirement as may be imposed under section 66 below has been complied with; or

(ii) in a case where such a requirement could be imposed but for there already being such a cistern as is mentioned in that section, that the cistern and its float-operated valve are in good repair;

(c) a requirement that there is no contravention in relation to the water fittings used or to be used in connection with—

(i) the supply of water to the relevant premises; or

(ii) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection; and

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(d) a requirement that every such step has been taken as has been specified in any notice served on any person under section 75 below in relation to the relevant premises.

[(2A) Any dispute between a water undertaker and any other person as to whether any requirement of a kind mentioned in subsection (2)(a) or (b) above has been complied with may be referred to [the Authority] for determination under section 30A above by either party to the dispute.]

[(2A) Any dispute between a water undertaker and any other person as to whether the expenses referred to in subsection (2)(a)(ii) above were incurred reasonably may be referred to [the Authority] for determination under section 30A above by either party to the dispute.]

(3) This section shall be without prejudice to the provisions of sections 233 and 372 of the Insolvency Act 1986 (conditions of supply after insolvency).

NOTES

Derivation

Sub-ss (1), (2), (3) derived from the Water Act 1989, s 45(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): word in square brackets in para (a)(ii) inserted by the Competition and Service (Utilities) Act 1992, s 51(5).

First sub-s (2A): inserted by the Competition and Service (Utilities) Act 1992, s 35(1), (5).

First sub-s (2A), second sub-s (2A): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Second sub-s (2A): inserted by the Competition and Service (Utilities) Act 1992, s 51(5).

54 Enforcement of domestic supply duty

(1) A duty imposed on a water undertaker under section 52 above—

(a) to provide a supply of water to any premises; or

(b) to maintain a connection between a water main and a service pipe by which such a supply is provided,

shall be owed to the consumer.

(2) Where a duty is owed by virtue of this section to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

NOTES

Derivation

This section derived from the Water Act 1989, s 45(7), (8).

Initial Commencement

Specified date

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Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Other supplies

55 Supplies for non-domestic purposes

(1) This section applies where the owner or occupier of any premises in the area of a water undertaker requests the undertaker to provide a supply of water to those premises and—

(a) the premises are premises which do not consist in the whole or any part of a building; or

(b) the requested supply is for purposes other than domestic purposes.

[(1A) This section also applies where—

(a) a water undertaker is requested to provide a supply of water to premises which are not in the undertaker's area by the owner or occupier of the premises;

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

(c) paragraph (a) or (b) of subsection (1) above applies.]

(2) Where this section applies, it shall be the duty of the water undertaker, in accordance with such terms and conditions as may be determined under section 56 below—

(a) to take any such steps as may be so determined in order to enable the undertaker to provide the requested supply; and

(b) having taken any such steps, to provide that supply.

(3) A water undertaker shall not be required by virtue of this section to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if the provision of that supply or the taking of those steps would—

(a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or

(b) otherwise put at risk the ability of the undertaker to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(4) A water undertaker shall not be required by virtue of this section to provide a new supply to any premises, or to take any steps to enable it to provide such a supply, if there is a contravention in relation to the water fittings used or to be used in connection with—

(a) the supply of water to those premises; or

(b) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.

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(5) Where—

(a) a request has been made by any person to a water undertaker for the purposes of subsection (2) above; and

(b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by the undertaker of any of its powers or the carrying out by the undertaker of any works,

the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of that person, under any term or condition in accordance with which those steps are taken, to re-imburse the undertaker in respect of some or all of the expenses incurred by the undertaker in taking those steps.

(6) Nothing in this section shall impose any duty on a water undertaker to provide a supply of water to any premises during any period during which it is reasonable for the supply of water to those premises to be cut off or reduced for the purposes of the carrying out of any necessary works.

(7) The duty of a water undertaker to supply water under this section at the request of any person, and any terms and conditions determined under section 56 below in default of agreement between the undertaker and that person, shall have effect as if contained in such an agreement.

(8) Except so far as otherwise provided by the terms and conditions determined under section 56 below in relation to any supply, the duties of a water undertaker under this section shall have effect subject to the provisions of sections 60 to 63 [and 63AB] and 75 below.

NOTES

Derivation

Sub-ss (1), (2), (5)–(7) derived from the Water Act 1989, s 46(1), (2), (7)–(9); sub-ss (3), (4) derived from the Water Act 1989, s 46(3); sub-s (8) derived from the Water Act 1989, s 49(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 16(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (8): words “and 63AB” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 16(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

56 Determinations on requests for non-domestic supplies

(1) Subject to subsection (3) below, any terms or conditions or other matter which falls to be determined for the purposes of a request made by any person to a water undertaker for the purposes of section 55 above shall be determined—

(a) by agreement between that person and the water undertaker; or

(b) in default of agreement, by [the Authority] according to what appears to [it] to be reasonable.

(2) Subject to subsection (3) below, [the Authority] shall also determine any dispute arising between any person and a water undertaker by virtue of subsection (3) or (4) of section 55 above.

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(3) [The Authority] may, instead of [itself] making a determination under subsection (1) or (2) above, refer any matter submitted to [it] for determination under that subsection to the arbitration of such person as [it] may appoint.

(4) For the purposes of any determination under this section by [the Authority] or any person appointed by [it] it shall be for a water undertaker to show that it should not be required to comply with a request made for the purposes of section 55 above.

(5) The charges in respect of a supply provided in compliance with any request made for the purposes of section 55 above—

(a) shall not be determined by [the Authority] or a person appointed by [it], except in so far as, at the time of the request, no provision is in force by virtue of a charges scheme under section 143 below in respect of supplies of the applicable description; and

(b) in so far they do fall to be determined, shall be so determined having regard to the desirability of the undertaker's—

(i) recovering the expenses of complying with its obligations under section 55 above; and

(ii) securing a reasonable return on its capital.

(6) To the extent that subsection (5)(a) above excludes any charges from a determination under this section, those charges shall be fixed from time to time by a charges scheme under section 143 below, but not otherwise.

(7) The determination of any matter under this section shall be without prejudice to the provisions of sections 233 and 372 of the Insolvency Act 1986 (conditions of supply after insolvency).

NOTES

Derivation

Sub-ss (1), (2), (7) derived from the Water Act 1989, s 46(4); sub-s (3) derived from the Water Act 1989, s 46(5); sub-ss (4)–(6) derived from the Water Act 1989, s 46(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1)–(5): words "the Authority", "it", "The Authority" and "itself" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

57 Duty to provide a supply of water etc for fire-fighting

(1) It shall be the duty of a water undertaker to allow any person to take water for extinguishing fires from any of its water mains or other pipes on which a fire-hydrant is fixed.

(2) Every water undertaker shall, at the request of the [fire and rescue authority] concerned, fix fire-hydrants on its water mains (other than its trunk mains) at such places as may be most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker.

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(3) It shall be the duty of every water undertaker to keep every fire-hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose, to replace any such hydrant when necessary.

(4) It shall be the duty of a water undertaker to ensure that a [fire and rescue authority] has been supplied by the undertaker with all such keys as the authority may require for the fire-hydrants fixed on the water mains or other pipes of the undertaker.

[(4A) Where a fire-hydrant is removed (other than at the request of the fire authority concerned) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.]

(5) Subject to [subsection (5A) and] section 58(3) below, the expenses incurred by a water undertaker in complying with its obligations under subsections (2) to (4) above shall be borne by the [fire and rescue authority] concerned.

[(5A) Where a fire-hydrant is damaged as the result of any use made of it with the authority of a water undertaker, other than use for the purposes of fire-fighting or for any other purposes of a fire and rescue authority, the fire and rescue authority is not liable for the cost of repairing or replacing the hydrant.]

(6) Nothing in this section shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.

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

(8) In addition, where a water undertaker is in breach of its obligations under this section, the undertaker shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(9) In any proceedings against any water undertaker for an offence under subsection (8) above it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(10) . . .

NOTES

Derivation

Sub-ss (1)–(6), (9), (10) derived from the Water Act 1989, s 47(1), (2), (4)–(7), (9), (11); sub-ss (7), (8) derived from the Water Act 1989, s 47(8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words “fire and rescue authority” in square brackets substituted by the Fire and Rescue Services Act 2004, s 53(1), Sch 1, paras 75, 76(1), (2).

Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).

Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.

Sub-s (4): words “fire and rescue authority” in square brackets substituted by the Fire and Rescue

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Services Act 2004, s 53(1), Sch 1, paras 75, 76(1), (2).
Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).
Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.
Sub-s (4A): inserted by the Water Act 2003, s 84(1).
Date in force: 1 April 2004: see SI 2004/641, art 3(v); for transitional provisions see art 6, Sch 3, para 7 thereto.
Sub-s (5): words "subsection (5A) and" in square brackets inserted by the Fire and Rescue Services Act 2004, s 53(1), Sch 1, paras 75, 76(1), (3)(a).
Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).
Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.
Sub-s (5): words "fire and rescue authority" in square brackets substituted by the Fire and Rescue Services Act 2004, s 53(1), Sch 1, paras 75, 76(1), (3)(b).
Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).
Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.
Sub-s (5A): inserted by the Fire and Rescue Services Act 2004, s 53(1), Sch 1, paras 75, 76(1), (4).
Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).
Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.
Sub-s (10): repealed by the Fire and Rescue Services Act 2004, s 54, Sch 2.
Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).
Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

58 Specially requested fire-hydrants

(1) A water undertaker shall, at the request of the owner or occupier of any factory or place of business, fix a fire-hydrant, to be used for extinguishing fires and not other purposes, at such place on any suitable water main or other pipe of the undertaker as is as near as conveniently possible to that factory or place of business.

(2) For the purposes of subsection (1) above a water main or other pipe is suitable, in relation to a factory or place of business, if—

(a) it is situated in a street which is in or near to that factory or place of business; and

(b) it is of sufficient dimensions to carry a hydrant and is not a trunk main.

(3) Subsection (5) of section 57 above shall not apply in relation to expenses incurred in compliance, in relation to a specially requested fire-hydrant, with the obligations under subsections (3) and (4) of that section.

(4) Any expenses incurred by a water undertaker—

(a) in complying with its obligations under subsection (1) above; or

(b) in complying, in relation to a specially requested fire-hydrant, with its obligations under section 57(3) or (4) above,

shall be borne by the owner or occupier of the factory or place of business in question, according to whether the person who made the original request for the hydrant did so in his capacity as owner or occupier.

[(4A) Where a specially requested fire-hydrant is removed (other than at the request of the owner or

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occupier of the factory or place of business in question) by a water undertaker in the course of carrying out works in relation to any of its water mains or other pipes, the cost of replacing the fire-hydrant shall be borne by the undertaker.]

(5) Subsections (6) to (9) of section 57 above shall apply in relation to the obligations of a water undertaker under this section as they apply to the obligations of a water undertaker under that section.

(6) In this section—

"factory" has the same meaning as in the Factories Act 1961; and

"specially requested fire-hydrant" means a fire-hydrant which—

(a) is fixed on a water main or other pipe of a water undertaker; and

(b) was fixed on that main or pipe (whether before or after it became such a main or pipe under the Water Act 1989) in pursuance of a request made by the owner or occupier of a factory or place of business.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 47(3), (10); sub-ss (3), (4) derived from the Water Act 1989, s 47(6); sub-s (5) derived from the Water Act 1989, s 47(7)–(9); sub-s (6) derived from the Water Act 1989, s 47(11).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (4A): inserted by the Water Act 2003, s 84(2).

Date in force: 1 April 2004: see SI 2004/641, art 3(v); for transitional provisions see art 6, Sch 3, para 7 thereto.

59 Supplies for other public purposes

(1) A water undertaker shall, at the request of a sewerage undertaker, highway authority or local authority, provide, from such of its pipes as are of an appropriate capacity, a supply of water for cleansing sewers and drains, for cleansing and watering highways or, as the case may be, for supplying any public pumps, baths or wash-houses.

(2) A supply of water provided by a water undertaker under this section shall be provided upon such terms and conditions as may be reasonable.

(3) A water main or other pipe of a water undertaker shall be treated as of an appropriate capacity for the purposes of this section if and only if it has a fire-hydrant fixed on it.

(4) Nothing in this section shall require a water undertaker to do anything which it is unable to do by reason of the carrying out of any necessary works.

(5) The obligations of a water undertaker under this section shall be enforceable under section 18 above by [the Authority].

NOTES

Derivation

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This section derived from the Water Act 1989, s 48.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (5): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Disconnections

60 Disconnections for the carrying out of necessary works

(1) Subject to the following provisions of this section, a water undertaker may—

(a) disconnect a service pipe which, for the purposes of providing a supply of water to any premises, is connected with any water main of that undertaker; or

(b) otherwise cut off a supply of water to any premises,

if it is reasonable for the disconnection to be made, or the supply to be cut off, for the purposes of the carrying out of any necessary works.

(2) The power of a water undertaker under this section to cut off a supply of water shall include power to reduce a supply of water.

(3) Except in an emergency or in the case of a reduction which is immaterial, the power of a water undertaker under this section to cut off or reduce a supply shall be exercisable in relation to any premises only after the undertaker has served reasonable notice on the consumer of the proposal for the carrying out of the necessary works.

(4) Where a water undertaker exercises its power under this section to make any disconnection or to cut off or reduce a supply of water to any premises for the purposes of the carrying out of any necessary works, it shall owe a duty to the consumer to secure—

(a) that those works are carried out with reasonable dispatch; and

(b) that any supply of water to those premises for domestic purposes is interrupted for more than twenty-four hours for the purposes of the carrying out of those works only if an emergency supply has been made available (whether or not in pipes) within a reasonable distance of the premises.

(5) Any breach by a water undertaker of the duty owed by virtue of subsection (4) above which causes any person to whom it is owed to sustain loss or damage shall be actionable at the suit of that person.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 49(1); sub-ss (2), (3) derived from the Water Act 1989, s 49(2); sub-ss (4), (5) derived from the Water Act 1989, s 49(3).

Initial Commencement

Specified date

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Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

61 Disconnections for non-payment of charges

(1) Subject to the following provisions of this section, a water undertaker may disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker, or may otherwise cut off a supply of water to any premises,

if the occupier of the premises—

(a) is liable (whether in his capacity as occupier or under any agreement with the undertaker) to pay charges due to the undertaker in respect of the supply of water to those premises; and

(b) has failed to do so before the end of the period of seven days beginning with the day after he is served with notice requiring him to do so.

[(1A) The power conferred by subsection (1) above is not exercisable in relation to any premises specified in Schedule 4A to this Act.]

(2) Where—

(a) a water undertaker has served a notice for the purposes of paragraph (b) of subsection (1) above on a person; and

(b) within the period of seven days mentioned in that paragraph, that person serves a counter-notice on the undertaker stating that he disputes his liability to pay the charges in question,

the undertaker shall not in respect of that notice exercise his power by virtue of that subsection in relation to any premises except at a time when that person is the occupier of the premises and those charges are enforceable against that person in a manner specified in subsection (3) below.

(3) For the purposes of subsection (2) above charges are enforceable in a manner specified in this subsection against a person if—

(a) the undertaker is able to enforce a judgment against that person for the payment of the charges; or

(b) that person is in breach of an agreement entered into, since the service of his counter-notice, for the purpose of avoiding or settling proceedings by the undertaker for the recovery of the charges.

(4) A water undertaker which exercises its power under this section to disconnect any pipe or otherwise to cut off any supply of water may recover, from the person in respect of whose liability the power is exercised, any expenses reasonably incurred by the undertaker in making the disconnection or in otherwise cutting off the supply

.

(5) Where—

(a) a water undertaker has power under this section to disconnect any pipe to any premises, or otherwise to cut off any supply to any premises; and

(b) a supply of water is provided to those premises and to other premises wholly or partly by the

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same service pipe,

the undertaker may exercise that power so as to cut off the supply to those other premises if and only if the same person is the occupier of the premises in relation to which the charges are due and of the other premises.

NOTES

Derivation

Sub-ss (1), (4), (5) derived from the Water Act 1989, s 49(1), (5), (6); sub-ss (2), (3) derived from the Water Act 1989, s 49(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1A): inserted by the Water Industry Act 1999, s 1(1).

Date in force: 30 June 1999: see the Water Industry Act 1999, s 17(2)(a).

62 Disconnections at request of customer

(1) Subject to the following provisions of this section, a water undertaker may—

(a) disconnect a service pipe which for the purposes of providing a supply of water to any premises is connected with any water main of that undertaker; or

(b) otherwise cut off a supply of water to any premises,

if notice specifying the time after which a supply of water to those premises will no longer be required has been served on the undertaker by a consumer and that time has passed.

(2) No person shall be liable to a water undertaker for any expenses incurred by the undertaker in exercising the power conferred on the undertaker by this section.

NOTES

Derivation

This section derived from the Water Act 1989, s 49(1), (7).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

63 General duties of undertakers with respect to disconnections

(1) Where a water undertaker—

(a) disconnects a service pipe to any inhabited house, or otherwise cuts off a supply of water to such a house; and

(b) does so without restoring the supply to that house before the end of the period of twenty-four hours beginning with the time when it is cut off,

the undertaker shall, no later than forty-eight hours after that time, serve notice that it has cut off that supply on the local authority in whose area the house is situated.

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(2) A water undertaker which fails, without reasonable excuse, to serve a notice on a local authority as required by subsection (1) above shall be guilty of an offence under this section.

(3) A water undertaker shall be guilty of an offence under this section if—

(a) it disconnects a service pipe to any premises, or otherwise cuts off a supply of water to any premises, in a case in which it has no power to do so under sections 60 to 62 above, section 75 below or any other enactment; or

(b) in disconnecting any such pipe or cutting off any such supply it fails, without reasonable excuse, to comply with any requirement of the provisions in pursuance of which it disconnects the pipe or cuts off the supply.

(4) A water undertaker which is guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 49(8); sub-ss (2)–(4) derived from the Water Act 1989, s 49(9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

[Supply by licensed water supplier etc]

NOTES

Amendment

Inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 17.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

[63AA Supply by licensed water supplier: domestic supply]

[(1) The owner or occupier of any premises may serve a notice on a water undertaker—

(a) informing the undertaker that the premises are to be supplied by a licensed water supplier; and

(b) specifying the time after which a supply of water to the premises by the undertaker will no longer be required.

(2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.

(3) In this section and section 63AB below, any reference to two working days is a reference to a period of forty-eight hours calculated after disregarding any time falling on—

(a) a Saturday or Sunday; or

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

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NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 17.
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

[63AB Supply by licensed water supplier: non-domestic supply]

[(1) The duty of a water undertaker under section 55 above to provide a supply of water to any premises shall cease to apply if—

(a) a notice specifying the time after which a supply of water to the premises by the undertaker will no longer be required in consequence of the premises being supplied by a licensed water supplier has been served on the undertaker by the owner or occupier of the premises; and

(b) that time has passed.

(2) Where the charges for the water supplied by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice shall fall at least two working days after the notice is served.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 17.
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

[63AC Interim duty of water undertaker: domestic and non-domestic supply]

[(1) This section applies where—

(a) a licensed water supplier ceases to supply any premises with water; and

(b) the owner or occupier of the premises has not notified the water undertaker in whose area the premises are that—

(i) he has made arrangements for the continuation of the supply of water to the premises; or

(ii) he intends any supply of water to the premises to cease.

(2) Where this section applies, it shall be the duty of the water undertaker to continue the supply of water to the premises which was made by the licensed water supplier.

(3) Where a supply is made under subsection (2)—

(a) the charges payable in respect of the supply shall be fixed from time to time by a charges scheme under section 143 below; and

(b) subject to subsection (8) below, the supply shall be made until—

(i) a supply is made under section 52 or 55 above; or

(ii) a notice is served by the undertaker on the owner or occupier of the

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premises stating that the supply is to be discontinued (subject to subsection (4) below),

whichever is earlier.

(4) A notice under subsection (3)(b)(ii) above may not be served before the end of the period of three months beginning with the day on which the supply by the supplier ceased.

(5) A water undertaker shall not be required by virtue of this section to provide a supply of water to any premises if the provision of the supply would—

(a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or

(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(6) The supply of water to any premises by a water undertaker under this section shall not prevent a proposed supply to those premises by that undertaker under section 55 above from being regarded as a new supply for the purposes of that section.

(7) Where a duty is imposed by this section in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage shall be actionable at the suit of that owner or occupier; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(8) Sections 60 to 63 above apply as they apply where a supply of water is made under section 52 or 55 above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 17.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

[Use of limiting devices]

NOTES

Amendment

Inserted by the Water Industry Act 1999, s 2.

Date in force: 30 June 1999: see the Water Industry Act 1999, s 17(2)(b).

[63A Prohibition of use of limiting devices]

[(1) A water undertaker shall be guilty of an offence under this section if it uses a limiting device in relation to any premises specified in Schedule 4A to this Act, with the intention of enforcing payment of charges which are or may become due to the undertaker in respect of the supply of water to the premises.

(2) For the purposes of this section “a limiting device”, in relation to any premises, means any device or apparatus which—

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(a) is fitted to any pipe by which water is supplied to the premises or a part of the premises, whether that pipe belongs to the undertaker or to any other person, and

(b) is designed to restrict the use which may be made of water supplied to the premises by the undertaker.

(3) An undertaker does not commit an offence under this section by disconnecting a service pipe to any premises or otherwise cutting off a supply of water to the premises.

(4) An undertaker guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

NOTES

Extent

This section does not extend to Scotland: see the Water Industry Act 1999, s 17(2)(b), (5)(a).

Amendment

Inserted by the Water Industry Act 1999, s 2.

Date in force: 30 June 1999: see the Water Industry Act 1999, s 17(2)(b).

Means of supply

64 Supply by means of separate service pipes

(1) Subject to the following provisions of this section, a water undertaker may require the provision of a separate service pipe to any premises . . . which—

(a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and

(b) are already supplied with water by the undertaker but do not have a separate service pipe.

(2) Where the supply of water to two or more houses [is provided wholly or partly by the same service pipe], the water undertaker shall not require the provision of separate service pipes to those houses until—

(a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;

(b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;

(c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;

(d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or

(e) the undertaker has reasonable grounds for believing that such interference as is mentioned in paragraph (d) above is likely to take place.

[(2A) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in subsection (2) above has been complied with may be referred to [the Authority] for determination under section 30A above by either party to the dispute.]

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(3) If, in the case of any such premises as are described in subsection (1) above, the water undertaker which provides a supply of water to those premises serves notice on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under subsection (4) below—

(a) that consumer shall, within three months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of paragraph (b) below;

(b) sections 45 to 51 above shall apply as if that consumer had by a connection notice required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;

(c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—

(i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made a demand for the purposes of section 52 above that such a supply is provided by means of the separate service pipe; and

(ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice;

and

(d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.

(4) If a person upon whom a notice has been served for the purposes of subsection (3) above fails to comply with the notice, the water undertaker may—

(a) itself carry out the works which that person was required to carry out; and

(b) recover the expenses reasonably incurred by the undertaker in doing so from that person.

(5) Without prejudice—

(a) to the power of a water undertaker by virtue of paragraph (b) of subsection (3) above to impose conditions under section 47 above; or

(b) to the power conferred by virtue of paragraph (d) of that subsection,

any works carried out by a water undertaker by virtue of the provisions of the said paragraph (b) or of subsection (4) above shall be necessary works for the purposes of this Chapter.

NOTES

Derivation

This section derived from the Water Act 1989, s 50.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Sub-s (1): words omitted repealed by the Competition and Service (Utilities) Act 1992, s 56(6), (7), Sch 1, para 21(a), Sch 2.

Sub-s (2): words in square brackets substituted by the Competition and Service (Utilities) Act 1992, s 56(6), Sch 1, para 21.

Sub-s (2A): inserted by the Competition and Service (Utilities) Act 1992, s 35(1), (6).

Sub-s (2A): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

65 Duties of undertakers as respects constancy and pressure

(1) Subject to the following provisions of this section, it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes as—

(a) are used for providing supplies of water for domestic purposes; or

(b) have fire-hydrants fixed on them,

to be laid on constantly and at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the undertaker's area.

(2) Nothing in subsection (1) above shall require a water undertaker to provide a supply of water at a height greater than that to which it will flow by gravitation through its water mains from the service reservoir or tank from which that supply is taken.

(3) For the purposes of this section a water undertaker shall be entitled to choose the service reservoir or tank from which any supply is to be taken.

(4) Nothing in subsection (1) above shall impose any duty on a water undertaker to maintain the constancy or pressure of any supply of water during any period during which it is reasonable for that supply to be cut off or reduced for the purposes of the carrying out of any necessary works.

(5) The Secretary of State may by order modify the application of the preceding provisions of this section in relation to any water undertaker.

(6) The Secretary of State shall not make an order under subsection (5) above except—

(a) in accordance with Schedule 5 to this Act; and

(b) on an application made in accordance with that Schedule by [the Authority] or by the water undertaker in relation to which the order is made.

(7) Subject to subsection (6) above, the power of the Secretary of State to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(8) An order under subsection (5) above may—

(a) require the payment of compensation by a water undertaker to persons affected by the order;

(b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(c) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

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(9) The obligations of a water undertaker under this section shall be enforceable under section 18 above by [the Authority].

(10) In addition, where a water undertaker is in breach of a duty under this section, the undertaker shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(11) In any proceedings against any water undertaker for an offence under subsection (10) above it shall be a defence for that undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

NOTES

Derivation

Sub-ss (1), (4), (11) derived from the Water Act 1989, s 51(1), (3), (9); sub-ss (2), (3) derived from the Water Act 1989, s 51(2); sub-ss (5), (6) derived from the Water Act 1989, s 51(4); sub-ss (7), (8) derived from the Water Act 1989, s 51(7); sub-ss (9), (10) derived from the Water Act 1989, s 51(8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (6), (9): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

66 Requirements by undertaker for maintaining pressure

(1) A water undertaker may require that any premises consisting in—

(a) any building or part of a building the supply of water to which need not, in accordance with provision contained in or made under this Act, be constantly laid on under pressure; or

(b) any relevant house to which water is required to be delivered at a height greater than a point 10.5 metres below the draw-off level of the service reservoir or tank from which a supply of water is being provided by the undertaker to those premises,

shall be provided with a cistern which has a float-operated valve and is fitted on the pipe by means of which water is supplied to those premises.

(2) A water undertaker may, in the case of such a house as is mentioned in paragraph (b) of subsection (1) above, require that a cistern the provision of which is required under that subsection shall

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be capable of holding sufficient water to provide an adequate supply to the house for a period of twenty-four hours.

(3) If, where a water undertaker provides a supply of water to any premises, the consumer, after having been required to do so by notice served on him by the undertaker, fails before the end of the period specified in the notice—

(a) to provide a cistern in accordance with a requirement under this section; or

(b) to put any such cistern and its float-operated valve into good repair,

the water undertaker may itself provide a cistern, or carry out any repairs necessary to prevent waste of water.

(4) The period specified for the purposes of subsection (3) above in a notice under this section shall be a period of not less than twenty-eight days beginning with the day after the service of the notice.

(5) Where a water undertaker provides a cistern or carries out any repairs under subsection (3) above, it may recover the expenses reasonably incurred by it in doing so from the owner of the premises in question.

(6) In this section—

"pre-transfer supplier", in relation to a house, means the person who was supplying water to that house immediately before 1st September 1989; and

"relevant house" means any house other than a house in relation to which the following two conditions are satisfied, that is to say—

(i) the erection of the house was commenced before 1st September 1989; and

(ii) no such requirement as is mentioned in subsection (1) or (2) above could have been imposed in relation to the house under any enactment having effect immediately before that date in relation to the pre-transfer supplier.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 51(5); sub-ss (3)–(5) derived from the Water Act 1989, s 51(6); sub-s (6) derived from the Water Act 1989, s 51(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

[Chapter 2A
Supply Duties etc: Licensed Water Suppliers]

NOTES

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for certain purposes): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art

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3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[Duty of undertaker to supply licensed water supplier etc]

NOTES

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for certain purposes): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[66A Wholesale water supply by primary water undertaker]

[(1) This section applies where—

(a) a licensed water supplier requests its primary water undertaker to provide it with a supply of water for the purpose of supplying water to the premises of its customers in accordance with the retail authorisation; and

(b) the premises are in the area of the undertaker.

(2) Where this section applies, it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

(a) to take any such steps—

(i) for the purpose of connecting the premises in question with the undertaker's supply system; or

(ii) in respect of that system,

as may be so provided for in order to enable the undertaker to provide the requested supply; and

(b) having taken any such steps, to provide that supply.

(3) A primary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier, or to take any steps to enable it to provide such a supply, if—

(a) both of the first and second conditions are satisfied; or

(b) the third condition is satisfied.

(4) The first condition is that—

(a) the premises to be supplied by the supplier do not consist in the whole or any part of a building; or

(b) the supply to be made by it to those premises is for purposes other than domestic purposes.

(5) The second condition is that the provision of the supply by the undertaker would—

(a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in

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carrying out works; or

(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(6) The third condition is that there is a contravention in relation to the water fittings used or to be used in connection with—

(a) the supply of water to the premises to be supplied by the supplier; or

(b) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.

(7) Where—

(a) a request has been made by a licensed water supplier to its primary water undertaker for the purposes of subsection (1) above; and

(b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

(8) A water undertaker is the primary water undertaker of a licensed water supplier for the purposes of this section and section 66C below if the undertaker's supply system is to be used for the purpose of making the supply to premises mentioned in those sections.

(9) In this section and sections 66B and 66C below—

(a) any reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above; and

(b) any reference to the retail authorisation shall be construed in accordance with section 17A(2) above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for the purposes of sub-s (6)): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a).

Subordinate Legislation

Water Supply Licence (Prescribed Water Fittings Requirements) Regulations 2005, SI 2005/3077 (made under sub-s (6)).

[66B Introduction of water into water undertaker's supply system]

[(1) This section applies where—

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(a) a qualifying licensed water supplier requests a water undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and

(b) the premises are in the area of the undertaker.

(2) This section also applies where—

(a) a water undertaker agrees to permit a qualifying licensed water supplier to introduce water into the undertaker's treatment works;

(b) in connection with that introduction, the supplier requests the undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and

(c) the premises are in the area of the undertaker.

(3) Where this section applies, it shall be the duty of the water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

(a) to take any such steps—

(i) for the purpose of connecting the premises in question with the undertaker's supply system;

(ii) for the purpose of connecting the treatment works of the qualifying licensed water supplier with that system (in a case falling within subsection (1) above);

(iii) for the purpose of connecting with that system any source used by the qualifying licensed water supplier for the purpose of supplying water other than for domestic or food production purposes (in a case falling within subsection (1) above); or

(iv) in respect of that system,

as may be so provided for in order to enable the supplier to make the requested introduction of the water into that system; and

(b) having taken any such steps, to permit the requested introduction of the water into that system.

(4) A water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable a qualifying water supplier to make such an introduction, if the first or second condition is satisfied.

(5) The first condition is that permitting the introduction of the water into the water undertaker's supply system would—

(a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or

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(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(6) The second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—

(a) the supply of water to the premises to be supplied by the supplier; or

(b) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.

(7) Where—

(a) a request has been made by a qualifying licensed water supplier to a water undertaker for the purposes of subsection (1) or (2) above; and

(b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

(8) In this section "treatment works"—

(a) in relation to a water undertaker, means the works designated as treatment works by the Secretary of State for the purposes of section 17B(6) above;

(b) in relation to a qualifying licensed water supplier, means the works designated from time to time by the Secretary of State as treatment works for the purposes of this paragraph.

(9) Before designating any works for the purposes of subsection (8)(b) above, the Secretary of State shall consult the Assembly.

(10) A list of any works designated for the purposes of subsection (8)(b) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.

(11) Any pipe laid in pursuance of subsection (3)(a)(ii) or (iii) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.

(12) In this section and section 66C below, references to a qualifying licensed water supplier are references to a licensed water supplier which is the holder of a combined licence (within the meaning of Chapter 1A of Part 2 of this Act).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for the purposes of sub-ss (8)–(10), (12)): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art

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3(a).

[66C Wholesale water supply by secondary water undertaker]

[(1) This section applies where—

(a) a qualifying licensed water supplier—

(i) requests a water undertaker other than its primary water undertaker (the "secondary water undertaker") to provide a supply of water for the purpose of the supplier supplying water, using the primary water undertaker's supply system, to the premises of the supplier's customers in accordance with the retail authorisation; and

(ii) requests its primary water undertaker to permit it to introduce that water into its supply system; and

(b) the premises are in the area of the primary water undertaker.

(2) Where this section applies—

(a) it shall be the duty of the secondary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

(i) to take any such steps in respect of its supply system as may be so provided for in order to enable it to provide the requested supply; and

(ii) having taken any such steps, to provide that supply; and

(b) it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

(i) to take any such steps specified in subsection (3) below as may be so provided for in order to enable the licensed water supplier to make the introduction of the requested supply of water into the primary water undertaker's supply system; and

(ii) having taken any such steps, to permit the introduction of that supply of water into that supply system.

(3) The steps mentioned in subsection (2)(b)(i) above are steps—

(a) for the purpose of connecting the premises in question with the primary water undertaker's supply system;

(b) for the purpose of connecting that system with the secondary water undertaker's supply system; or

(c) in respect of the primary water undertaker's supply system.

(4) If the first or second condition is satisfied—

(a) a secondary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier; and

(b) a primary water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable the licensed water supplier to make such an introduction.

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(5) The first condition is that the provision of the supply or permitting the introduction would—

(a) require the undertaker in question, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or

(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.

(6) This second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—

(a) the supply of water to the premises to be supplied by the supplier; or

(b) the use of water in those premises,

of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.

(7) Where—

(a) requests have been made by a licensed water supplier to its primary water undertaker and secondary water undertaker for the purposes of subsection (1) above; and

(b) the steps which either of those undertakers is required to take by virtue of the request made to it include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the undertaker's failure to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.

(8) Any pipe laid in pursuance of subsection (2)(b)(i) above by virtue of subsection (3)(b) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a).

[66D Sections 66A to 66C: determinations and agreements]

[(1) The Authority may determine, in a case referred to it by a licensed water supplier, whether any condition specified in section 66A(4) to (6), 66B(5) or (6) or 66C(5) or (6) above is satisfied (subject to section 66F below).

(2) The period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are—

(a) those which are—

(i) in a case falling within section 66A(2) or 66B(3) above, agreed between the water undertaker and the licensed water supplier in question; and

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(ii) in a case falling within section 66C(2) above, agreed between the water undertakers and the licensed water supplier in question; or

(b) in default of such agreement, those which are determined by the Authority, in a case referred to it by the licensed water supplier in question, if they are acceptable to the supplier,

(subject to the following provisions of this section and sections 66E and 66F below).

(3) The charges payable by a licensed water supplier to a water undertaker under an agreement under paragraph (a)(i) or (ii) of subsection (2) above or a determination under paragraph (b) of that subsection shall be fixed in accordance with the costs principle set out in section 66E below.

(4) The Authority shall issue guidance in accordance with which the terms and conditions of an agreement under paragraph (a)(i) or (ii) of subsection (2) above shall be made.

(5) Before issuing guidance under subsection (4) above, the Authority shall consult such persons as it considers appropriate.

(6) The guidance issued under subsection (4) above shall include guidance with respect to the fixing of charges in accordance with subsection (3) above.

(7) Subsection (8) below applies if it appears to the Authority that an agreement under paragraph (a)(i) or (ii) of subsection (2) above has not been made in accordance with—

(a) subsection (3) above; or

(b) the guidance issued under subsection (4) above.

(8) The Authority may require the parties to the agreement to—

(a) modify the agreement; or

(b) terminate the agreement,

and that requirement shall be enforceable under section 18 above by the Authority.

(9) Neither the [CMA] nor the Authority may exercise, in respect of an agreement under paragraph (a)(i) or (ii) of subsection (2) above, the powers conferred by—

(a) section 32 of the Competition Act 1998 (directions in relation to agreements); and

(b) subsection (2) of section 35 of that Act (interim directions).

(10) Subsection (9)(b) above does not apply to the exercise of powers in respect of conduct—

(a) which is connected with an agreement under paragraph (a)(i) or (ii) of subsection (2) above; and

(b) in respect of which subsection (1)(b) of section 35 of that Act applies.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for the purposes of sub-ss (4)–(6)): 1 April 2004: by virtue of SI 2004/641, art

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3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.
Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.
Sub-s (9): reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 88.
Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

[66E Section 66D: costs principle]

[(1) The costs principle referred to in subsection (3) of section 66D above is that the charges payable by a licensed water supplier to a water undertaker, under the agreement or determination mentioned in that subsection, shall enable the undertaker to recover from the supplier—

(a) any expenses reasonably incurred in performing any duty under sections 66A to 66C above in accordance with that agreement or determination, and

(b) the appropriate amount in respect of qualifying expenses and a reasonable return on that amount,

to the extent that those sums exceed any financial benefits which the undertaker receives as a result of the supplier supplying water to the premises of relevant customers.

(2) In subsection (1) above "qualifying expenses" means expenses (whether of a capital nature or otherwise) that the water undertaker has reasonably incurred or will reasonably incur in carrying out its functions.

(3) For the purposes of subsection (1)(b) above, the appropriate amount is the amount which the water undertaker—

(a) reasonably expected to recover from relevant customers; but

(b) is unable to recover from those customers as a result of their premises being supplied with water by the licensed water supplier.

(4) Nothing in subsection (3) above shall enable a water undertaker to recover any amount—

(a) to the extent that any expenses can be reduced or avoided; or

(b) to the extent that any amount is recoverable in some other way (other than from other customers of the undertaker).

(5) In this section "relevant customers" means customers to whose premises the licensed water supplier is to make any supply of water in connection with which the agreement or determination mentioned in subsection (1) above is made.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.
Date in force: 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

[66F Section 66D: supplementary]

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[(1) Before the Authority makes—

(a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66B(5) or (6) above is satisfied; or

(b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which a water undertaker is to perform any duty under section 66B above,

it shall consult the Secretary of State (subject to subsection (3) below).

(2) Before the Authority makes—

(a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66C(5) or (6) is satisfied; or

(b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which the water undertakers are to perform any duty under section 66C above,

it shall consult [the persons specified in subsection (2A)].

[(2A) The persons specified for the purposes of subsection (2) are—

(a) the Secretary of State (subject to subsections (3) and (4) below);

(b) the Environment Agency, if the determination is in relation to a supply of water that would affect water resources in England;

(c) the NRBW, if the determination is in relation to a supply of water that would affect water resources in Wales.]

(3) If—

(a) a determination mentioned in subsection (1) or (2) above is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales; and

(b) in the case of a determination mentioned in subsection (2) above, the area of the secondary water undertaker in question is wholly or mainly in Wales,

the Authority shall consult the Assembly (and not the Secretary of State).

(4) If a determination mentioned in subsection (2) above—

(a) is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in—

(i) England; or

(ii) Wales;

(b) but the area of the secondary water undertaker in question is (respectively) wholly or mainly in—

(i) Wales; or

(ii) England,

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the Authority shall consult the Assembly (as well as the Secretary of State).

(5) The Authority shall publish guidance issued under section 66D(4) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(6) The Authority may from time to time revise the guidance so issued.

(7) Before revising any guidance under subsection (6) above, the Authority shall consult such persons as it considers appropriate.

(8) Subsection (5) above applies to guidance revised under subsection (6) above as it applies to guidance issued under section 66D(4) above.

(9) In this section, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.

(10) Where the period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are determined in accordance with subsection (2)(b) of section 66D above, they shall have effect as if they had been agreed between the parties in question (and references in the following provisions of this Act to an agreement under that section shall be construed accordingly).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for the purposes of sub-ss (5)–(8)): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words “the persons specified in subsection (2A)” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 233(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 233(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

[66G Designation of strategic supply]

[(1) Subsection (2) below applies if at any time the Authority determines that an introduction of water which a water undertaker is required to permit under section 66B or 66C above in accordance with an agreement under section 66D above constitutes a strategic supply of water.

(2) The Authority shall designate the introduction as a strategic supply.

(3) Subsection (4) below applies if—

(a) a water undertaker requests the Authority to make a determination that an introduction of water constitutes a strategic supply for the purposes of subsection (1) above, or

(b) the Authority otherwise proposes to make a determination that an introduction of water constitutes a strategic supply for the purposes of that subsection.

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(4) The Authority shall give notice of the request or proposed determination to—

(a) the Secretary of State;

(b) the Assembly;

(c) the Environment Agency[, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in England];

[(ca) the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in Wales;]

(d) the other party or parties, or the parties, to the agreement under section 66D above; and

(e) such other persons (if any) as the Authority thinks it appropriate to notify.

(5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.

(6) The Authority shall consider any representations or objections which are duly made and not withdrawn.

(7) If the Authority determines that an introduction designated under this section as a strategic supply no longer constitutes such a supply, it shall cancel its designation.

(8) If the Authority proposes to make a determination under subsection (7) above that an introduction no longer constitutes a strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.

(9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).

(10) For the purposes of this section, an introduction of water is a strategic supply if, without that introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers[, and supplies which it is obliged to make under section 66A or 66C,] as well as supplying customers of the licensed water supplier in question with water for domestic purposes.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (c) words from “, if the request” to “premises in England” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 234(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): para (ca) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 234(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (10): words “, and supplies which it is obliged to make under section 66A or 66C,” in square brackets inserted by the Flood and Water Management Act 2010, s 34, Sch 5, para 7(1).

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Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j).

[66H Designation of collective strategic supply]

[(1) Subsection (2) below applies if at any time the Authority determines that two or more introductions of water—

(a) which are made by a licensed water supplier; and

(b) which a water undertaker is required to permit under section 66B or 66C above in accordance with agreements under section 66D above,

constitute a collective strategic supply of water.

(2) The Authority shall designate the introductions as a collective strategic supply.

(3) Subsection (4) below applies if—

(a) a water undertaker requests the Authority to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of subsection (1) above, or

(b) the Authority otherwise proposes to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of that subsection.

(4) The Authority shall give notice of the request or proposed determination to—

(a) the Secretary of State;

(b) the Assembly;

(c) the Environment Agency[, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in England];

[(ca) the NRBW, if the request or proposed determination relates to an introduction of water to the supply system of a water undertaker for the purpose of supplying water to premises in Wales;]

(d) the other party or parties, or the parties, to the agreements under section 66D above; and

(e) such other persons (if any) as the Authority thinks it appropriate to notify.

(5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.

(6) The Authority shall consider any representations or objections which are duly made and not withdrawn.

(7) If the Authority determines that introductions designated under this section as a collective strategic supply no longer constitute such a supply, it shall cancel their designation.

(8) If the Authority proposes to make a determination under subsection (7) above that introductions no longer constitute a collective strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.

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(9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).

(10) For the purposes of this section, introductions of water are a collective strategic supply if, without those introductions being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers[, and supplies which it is obliged to make under section 66A or 66C,] as well as supplying the customers of the licensed water supplier in question with water for domestic purposes.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force: 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4): in para (c) words from ", if the request" to "premises in England" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 235(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): para (ca) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 235(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (10): words ", and supplies which it is obliged to make under section 66A or 66C," in square brackets inserted by the Flood and Water Management Act 2010, s 34, Sch 5, para 7(2).

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j).

[Offences]

NOTES

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for certain purposes): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[66I Prohibition on unauthorised use of supply system]

[(1) Subject to subsections (2) and (3) and section 66K below, no person shall use a water undertaker's supply system for the purpose of supplying water to any premises of a customer

.

(2) Subsection (1) above shall not apply where the supply is made—

(a) by the water undertaker, or

(b) by a licensed water supplier in pursuance of its licence.

(3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.

(4) A person who contravenes subsection (1) above shall be guilty of an offence.

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(5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.

(6) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, and

(b) on conviction on indictment, to a fine.

(7) No proceedings for an offence under this section shall be instituted except by—

(a) the Secretary of State, or

(b) the Authority.

(8) The functions of—

(a) making regulations under subsection (3) above; and

(b) instituting proceedings under subsection (7)(a) above,

are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

(9) In this section and sections 66J and 66L below, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for the purposes of sub-s (3)): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for the purposes of sub-s (8), in part): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Subordinate Legislation

Water Supply (Exceptions from Supply System Prohibitions) Regulations 2005, SI 2005/3075 (made under sub-s (3)).

[66J Prohibition on unauthorised introduction of water]

[(1) Subject to subsections (2) and (3) and section 66K below, no person shall introduce water into a water undertaker's supply system (other than the undertaker itself).

(2) Subsection (1) above shall not apply where the water is introduced—

(a) by a licensed water supplier in pursuance of its licence, or

(b) by another water undertaker under an agreement for a supply of water in bulk.

(3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.

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(4) A person who contravenes subsection (1) above shall be guilty of an offence.

(5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.

(6) A person guilty of an offence under this section shall be liable [on summary conviction, or on conviction on indictment, to a fine].

(7) For the purposes of section 210 below, the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.

(8) No proceedings for an offence under this section shall be instituted except by—

(a) the Secretary of State; or

(b) the Authority.

(9) The functions of—

(a) making regulations under subsection (3) above; and

(b) instituting proceedings under subsection (8)(a) above,

are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force (for the purposes of sub-s (3)): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for the purposes of sub-s (9), in part): 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Date in force (for remaining purposes): 1 December 2005: by virtue of SI 2005/2714, art 3(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): words “on summary conviction, or on conviction on indictment, to a fine” in square brackets substituted by SI 2015/664, reg 4(1), Sch 4, Pt 1, para 23(1), (2).

Date in force: 12 March 2015: see SI 2015/664, reg 1(1); for transitional provision and savings see reg 5(1).

Subordinate Legislation

Water Supply (Exceptions from Supply System Prohibitions) Regulations 2005, SI 2005/3075 (made under sub-s (3)).

[66K Sections 66I and 66J: exemptions]

[(1) The Secretary of State may by order made by statutory instrument grant exemption from section 66I(1) or 66J(1) above to—

(a) a person or persons of a class;

(b) generally or to such extent as may be specified in the order; and

(c) unconditionally or subject to such conditions as may be so specified.

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(2) Before making an order under subsection (1) above the Secretary of State shall give notice—

(a) stating that he proposes to make such an order and setting out the terms of the proposed order;

(b) stating the reasons why he proposes to make the order in the terms proposed; and

(c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3) The notice required by subsection (2) above shall be given—

(a) by serving a copy of it on the Authority; and

(b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.

(4) Notice of an exemption granted to a person shall be given—

(a) by serving a copy of the exemption on him; and

(b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.

(5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—

(a) persons of that class; and

(b) other persons who may be affected by it.

(6) An exemption may be granted—

(a) indefinitely; or

(b) for a period specified in, or determined by or under, the exemption.

(7) Conditions included in an exemption by virtue of subsection (1)(c) above may, in particular, require any person carrying on any activity in pursuance of the exemption—

(a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;

(b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and

(c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

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Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force: 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

[66L Section 66K: supplementary]

[(1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a person under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

(2) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to persons of a class under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—

(a) in accordance with any provision of the order by which the exemption was granted; or

(b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.

(3) The Secretary of State may by direction withdraw an exemption granted to persons of a class under section 66K(1) above from any person of that class—

(a) at the person's request;

(b) in accordance with any provision of the order by which the exemption was granted; or

(c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.

(4) Before making an order under subsection (1)(b) or (c) or (2) above or giving a direction under subsection (3)(b) or (c) above, the Secretary of State shall—

(a) consult the Authority; and

(b) give notice—

(i) stating that he proposes to make such an order or give such a direction;

(ii) stating the reasons why he proposes to make such an order or give such a direction; and

(iii) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The notice under subsection (4) above shall be given—

(a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c) above, by serving a copy of it on the person to whom the exemption was granted;

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(b) where he is proposing to make an order under subsection (2) above, by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and

(c) where he is proposing to give a direction under subsection (3)(b) or (c) above, by serving a copy of it on the person from whom he proposes to withdraw the exemption.

(6) A statutory instrument containing an order under subsection (1) or (2) above or subsection (1) of section 66K above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) The power to—

(a) make an order under subsection (1) or (2) above or subsection (1) of section 66K above; or

(b) give a direction under subsection (3) above,

is exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

(8) Accordingly, subsections (1) to (5) above and section 66K above apply in relation to an order made or a direction given by the Assembly by virtue of subsection (7) above as they apply in relation to an order made or direction given by the Secretary of State.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 56, Sch 4, paras 1, 3.

Date in force: 1 April 2004: by virtue of SI 2004/641, art 3(l), Sch 1; for transitional provisions see art 6, Sch 3, para 7 thereto.

Chapter III
Quality and Sufficiency of Supplies

Standards of wholesomeness

67 Standards of wholesomeness

(1) The Secretary of State may by regulations make provision that water that is supplied to any premises is or is not to be regarded as wholesome for the purposes of this Chapter if it satisfies or, as the case may be, fails to satisfy such requirements as may be prescribed.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for the purpose of determining the wholesomeness of any water—

(a) prescribe general requirements as to the purposes for which the water is to be suitable;

(b) prescribe specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;

(c) prescribe specific requirements as to other characteristics of the water;

(d) provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed;

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(e) enable the Secretary of State to authorise such relaxations of and departures from the prescribed requirements (or from any of them) as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition; and

(f) enable the Secretary of State to authorise a local authority (either instead of the Secretary of State or concurrently with him) to exercise in relation to a private supply any power conferred on the Secretary of State by regulations made by virtue of paragraph (e) above.

NOTES

Derivation

This section derived from the Water Act 1989, s 65.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the following functions under this section are transferred to the National Assembly for Wales: (a) as respects the making of regulations concerning water supplied by water undertakers, the function is transferred in relation to any water undertaker whose area is wholly or mainly in Wales; (b) as respects the making of regulations concerning water supplied other than by a water undertaker, the function is transferred in relation to Wales.

Subordinate Legislation

Water Supply (Water Quality) Regulations 2000, SI 2000/3184.
Water Supply (Water Quality) (Amendment) Regulations 2001, SI 2001/2885.
Water Supply (Water Quality) Regulations 2000 (Amendment) Regulations 2007, SI 2007/2734.
Private Water Supplies Regulations 2009, SI 2009/3101.
Private Water Supplies (Wales) Regulations 2010, SI 2010/66.
Private Water Supplies (Wales) (Amendment) Regulations 2010, SI 2010/147.
Water Supply (Water Quality) Regulations 2010, SI 2010/994.
Private Water Supplies (Wales) (Amendment) (No 2) Regulations 2010, SI 2010/1384.
Water Supply (Water Quality) (Amendment) Regulations 2011, SI 2011/14.

General obligations of undertakers [and licensed water suppliers]

NOTES

Amendment

Cross-heading: words “and licensed water suppliers” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (8).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

68 Duties of water undertakers [and licensed water suppliers] with respect to water quality

(1) It shall be the duty of a water undertaker [where its supply system is used for the purpose of supplying water to any premises for domestic or food production purposes]—

(a) [to ensure that any water so supplied] is wholesome at the time of supply; and

(b) so far as reasonably practicable, to ensure, in relation to each source or combination of

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sources from which [water is so supplied], that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources;

[and this section and section 69 below apply, in relation to the duty of an undertaker, whether or not the water supplied using the undertaker's supply system is supplied by the undertaker].

[(1A) It shall be the duty of a licensed water supplier—

(a) when supplying water to any premises for domestic or food production purposes, in accordance with its retail authorisation, to ensure that the water is wholesome at the time of supply; and

(b) so far as reasonably practicable, to ensure, in relation to each source or combination of sources from which that supplier supplies water to premises for domestic or food production purposes, in accordance with its retail authorisation, that there is, in general, no deterioration in the quality of the water which is supplied from time to time from that source or combination of sources,

and references in this subsection to the retail authorisation shall be construed in accordance with section 17A(2) above.]

(2) For the purposes of this section and section 69 below and subject to subsection (3) below, [where a water undertaker's supply system is used for the purpose of supplying water to any premises, any water so supplied] to any premises shall not be regarded as unwholesome at the time of supply where it has ceased to be wholesome only after leaving the undertaker's pipes.

(3) For the purposes of [subsection (1) above where a water undertaker's supply system is used for the purpose of supplying water to any premises, and the water so supplied] would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—

(a) it has ceased to be wholesome after leaving the undertaker's pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and

(b) it has so ceased in consequence of the failure of the undertaker, before [the water is supplied, to ensure that such steps are taken] as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the undertaker's pipes.

[(3A) For the purposes of subsection (1A) above where water supplied by a licensed water supplier to any premises would not otherwise be regarded as unwholesome at the time of supply, that water shall be regarded as unwholesome at that time if—

(a) it has ceased to be wholesome after leaving the relevant pipes but while in a pipe which is subject to water pressure from a water main or which would be so subject but for the closing of some valve; and

(b) it has so ceased in consequence of the failure of the supplier, before supplying the water, to ensure that such steps are taken as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be wholesome after leaving the relevant pipes.

(3B) In subsection (3A) above "relevant pipes" means the pipes of the water undertaker whose supply system is used for the purpose of the supply made by the licensed water supplier.]

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(4) The provisions of this section shall apply in relation to water which is supplied by a water undertaker whether or not the water is water which the undertaker is required to supply by virtue of any provision of this Act.

(5) The duties of a water undertaker [and licensed water supplier] under this section shall be enforceable under section 18 above by the Secretary of State.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 52(1), the Food Safety Act 1990, s 55(2); sub-ss (2)–(5) derived from the Water Act 1989, s 52(2)–(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: words "and licensed water suppliers" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (8).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): words from "where its supply" to "food production purposes" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (2)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): in para (a) words "to ensure that any water so supplied" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (2)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): in para (b) words "water is so supplied" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (2)(c).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): words from "and this section" to "by the undertaker" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (2)(d).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): words from "where a water" to "water so supplied" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): words from "subsection (1) above" to "water so supplied" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (5)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): in para (b) words "the water is supplied, to ensure that such steps are taken" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (5)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-ss (3A), (3B): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (6).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (5): words "and licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 18(1), (7).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and

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sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

69 Regulations for preserving water quality

(1) The Secretary of State may by regulations require a water undertaker [or a licensed water supplier to ensure that such steps are taken] as may be prescribed for the purpose of securing compliance with section 68 above.

(2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may impose an obligation on a water undertaker [or licensed water supplier]—

(a) to [ensure that all such steps are taken] as may be prescribed for monitoring and recording whether the water [used for relevant supplies] to premises for domestic or food production purposes is wholesome at the time of supply;

(b) to [ensure that all such steps are taken] as may be prescribed for monitoring and recording the quality of the water from any source, or combination of sources, which [is used or is proposed to be used for making relevant supplies] to any premises for domestic or food production purposes;

(c) to ensure that a source which [is used or proposed to be used for making relevant supplies] for domestic or food production purposes is not so used until prescribed requirements for establishing the quality of water which may be supplied from that source have been complied with;

(d) to [ensure that records are kept] of the localities within which all the premises [receiving relevant supplies] for domestic or food production purposes . . . are normally supplied from the same source or combination of sources;

(e) to [ensure that prescribed requirements are complied with] with respect to the analysis of water samples or with respect to internal reporting or organisational arrangements.

(3) Without prejudice to subsections (1) and (2) above, the Secretary of State may by regulations make provision [imposing obligations on water undertakers or licensed water suppliers with respect to the use for the purposes of or in connection with making relevant supplies]—

(a) of such processes and substances; and

(b) of products that contain or are made with such substances or materials,

as he considers might affect the quality of any water.

(4) Without prejudice to the generality of the power conferred by subsection (3) above, regulations under that subsection may—

(a) [require water undertakers or licensed water suppliers to ensure that] processes, substances and products which have not been approved under the regulations or which contravene the regulations [are not used for the purposes of or in connection with relevant supplies];

(b) for the purposes of provision made by virtue of paragraph (a) above, require [water undertakers and licensed water suppliers to ensure that] processes, substances and products used [for the purposes of or in connection with relevant supplies] conform to such standards as may be prescribed by or approved under the regulations;

(c) impose such other requirements as may be prescribed with respect to the use [for the purposes of or in connection with relevant supplies] of prescribed processes, substances and

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products;

(d) provide for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations, for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition;

(e) impose obligations to furnish prescribed persons with information reasonably required by those persons for the purpose of carrying out functions under the regulations;

(f) provide for a contravention of the regulations to constitute—

(i) a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed; or

(ii) an offence triable either way and punishable, on summary conviction, by a fine not exceeding the statutory maximum and, on conviction on indictment, by a fine;

and

(g) require prescribed charges to be paid to persons carrying out functions under the regulations.

(5) The Secretary of State may by regulations . . .—

(a) [require a water undertaker] to publish information about the quality of water supplied for domestic or food production purposes to any premises [using that undertaker's supply system]; . . .

[(aa) require a licensed water supplier to publish information about the quality of water supplied for domestic or food production purposes to any premises by that supplier;]

(b) [require any such undertaker or supplier] to provide information to prescribed persons about the quality of water [supplied as referred to in paragraph (a) or (aa) above (as the case may be)].

(6) Regulations under subsection (5) above—

(a) shall prescribe both the information which is to be published or provided in pursuance of the regulations and the manner and circumstances in which it is to be published or provided;

(b) may require the provision of information by a water undertaker [or licensed water supplier] to any person to be free of charge or may authorise it to be subject to the payment by that person to the undertaker [or supplier] of a prescribed charge; and

(c) may impose such other conditions on the provision of information by a water undertaker [or licensed water supplier] to any person as may be prescribed.

[(7) In this section, "relevant supplies" means—

(a) in the case of an obligation imposed on a water undertaker, supplies of water—

(i) made by the undertaker in carrying out its functions; or

(ii) made by a licensed water supplier using the undertaker's supply system; and

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(b) in the case of an obligation imposed on a licensed water supplier, supplies of water made by that supplier using a water undertaker's supply system.]

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 53(1), the Food Safety Act 1990, s 55(2); sub-ss (3), (4) derived from the Water Act 1989, s 53(2); sub-s (5) derived from the Water Act 1989, s 53(3), the Food Safety Act 1990, s 55(2); sub-s (6) derived from the Water Act 1989, s 53(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "or a licensed water supplier to ensure such steps are taken" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (2).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(a).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (a) words "ensure that all such steps are taken" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(b)(i).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (a) words "used for relevant supplies" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(b)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (b) words "ensure that all such steps are taken" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(c)(i).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (b) words "is used or is proposed to be used for making relevant supplies" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(c)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (c) words "is used or proposed to be used for making relevant supplies" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(d).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (d) words "ensure that records are kept" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(e)(i).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (d) words "receiving relevant supplies" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(e)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (d) words omitted repealed by the Water Act 2003, s 101, Sch 8, paras 2, 19(1), (3)(e)(iii), Sch 9, Pt 3.

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (e) words "ensure that prescribed requirements are complied with" in square

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brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (3)(f).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): words from “imposing obligations on” to “making relevant supplies” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (4).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): in para (a) words “require water undertakers or licensed water suppliers to ensure that” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (5)(a)(i).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): in para (a) words from “are not used” to “with relevant supplies” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (5)(a)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): in para (b) words “water undertakers and licensed water suppliers to ensure that” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (5)(b)(i).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): in para (b) words “for the purposes of or in connection with relevant supplies” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (5)(b)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): in para (c) words “for the purposes of or in connection with relevant supplies” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (5)(c).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): words omitted repealed by the Water Act 2003, s 101, Sch 8, paras 2, 19(1), (6)(a), Sch 9, Pt 3.

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): in para (a) words “require a water undertaker” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (6)(b)(i).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): in para (a) words “using that undertaker’s supply system” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (6)(b)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): in para (a) word omitted repealed by the Water Act 2003, s 101, Sch 8, paras 2, 19(1), (6)(c), Sch 9, Pt 3.

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): para (aa) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (6)(d).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): in para (b) words “require any such undertaker or supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (6)(e)(i).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): in para (b) words from “supplied as referred” to “case may be)” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (6)(e)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): in para (b) words “or licensed water supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (7)(a)(i).

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Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): in para (b) words "or supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (7)(a)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): in para (c) words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (7)(b).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (7): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 19(1), (8).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water Supply (Water Quality) Regulations 2000, SI 2000/3184.
Water Supply (Water Quality) (Amendment) Regulations 2001, SI 2001/2885.
Water Supply (Water Quality) Regulations 2000 (Amendment) Regulations 2007, SI 2007/2734.
Water Supply Regulations 2010, SI 2010/991.
Water Supply (Water Quality) Regulations 2010, SI 2010/994.
Water Supply (Water Quality) (Amendment) Regulations 2011, SI 2011/14.

70 Offence of supplying water unfit for human consumption

(1) Subject to subsection (3) below, where a [water undertaker's supply system is used for the purposes of supplying water] to any premises and that water is unfit for human consumption, [the relevant persons] shall be guilty of an offence and liable [on summary conviction, or on conviction on indictment, to a fine].

[(1A) For the purposes of subsection (1) above, the relevant persons are—

(a) the water undertaker whose supply system is used for the purposes of supplying the water (in this section referred to as the "primary water undertaker"); and

(b) any employer of persons, or any self-employed person, who is concerned in the supply of the water.]

(2) For the purposes of section 210 below and any other enactment under which an individual is guilty of an offence by virtue of subsection (1) above the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.

(3) In any proceedings against any [relevant person] for an offence under this section it shall be a defence for [that person] to show that it—

(a) had no reasonable grounds for suspecting that the water would be used for human consumption; or

(b) took all reasonable steps and exercised all due diligence for securing that the water was fit

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for human consumption on leaving [the primary water undertaker's] pipes or was not used for human consumption.

[(3A) For the purposes of paragraph (b) of subsection (3) above—

(a) in the case of proceedings against a primary water undertaker, showing that the undertaker took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that the relevant arrangements were reasonable in all the circumstances; and

(b) in the case of proceedings against any other relevant person, showing that the person took all reasonable steps and exercised all due diligence as mentioned in that paragraph includes (among other things) showing that it took all reasonable steps and exercised all due diligence for securing that all aspects of the relevant arrangements for which it was responsible were properly carried out.

(3B) In subsection (3A) above, "relevant arrangements" means arrangements made by the primary water undertaker to ensure that all other relevant persons were required to take all reasonable steps and exercise all due diligence for securing that the water was fit for human consumption on leaving the undertaker's pipes or was not used for human consumption.]

(4) Proceedings for an offence under this section shall not be instituted except by the Secretary of State or the Director of Public Prosecutions.

NOTES

Derivation

This section derived from the Water Act 1989, s 54.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "water undertaker's supply system is used for the purposes of supplying water" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 20(1), (2)(a).

Date in force: 1 October 2004: see SI 2004/2528, art 2(t)(iv).

Sub-s (1): words "the relevant persons" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 20(1), (2)(b).

Date in force: 1 October 2004: see SI 2004/2528, art 2(t)(iv).

Sub-s (1): words "on summary conviction, or on conviction on indictment, to a fine" in square brackets substituted by SI 2015/664, reg 4(1), Sch 4, Pt 1, para 23(1), (3).

Date in force: 12 March 2015: see SI 2015/664, reg 1(1); for transitional provision and savings see reg 5(1).

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 20(1), (3).

Date in force: 1 October 2004: see SI 2004/2528, art 2(t)(iv).

Sub-s (3): words "relevant person" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 20(1), (4)(a).

Date in force: 1 October 2004: see SI 2004/2528, art 2(t)(iv).

Sub-s (3): words "that person" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 20(1), (4)(b).

Date in force: 1 October 2004: see SI 2004/2528, art 2(t)(iv).

Sub-s (3): in para (b) words "the primary water undertaker's" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 20(1), (4)(c).

Date in force: 1 October 2004: see SI 2004/2528, art 2(t)(iv).

Sub-ss (3A), (3B): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 20(1), (5).

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Date in force: 1 October 2004: see SI 2004/2528, art 2(t)(iv).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Waste, contamination, misuse etc

71 Waste from water sources

(1) Subject to subsections (2) and (3) below, a person shall be guilty of an offence under this section if—

(a) he causes or allows any underground water to run to waste from any well, borehole or other work; or

(b) he abstracts from any well, borehole or other work water in excess of his reasonable requirements.

(2) A person shall not be guilty of an offence by virtue of subsection (1)(a) above in respect of anything done for the purpose—

(a) of testing the extent or quality of the supply; or

(b) of cleaning, sterilising, examining or repairing the well, borehole or other work in question.

(3) Where underground water interferes or threatens to interfere with the carrying out or operation of any underground works (whether waterworks or not), it shall not be an offence under this section, if no other method of disposing of the water is reasonably practicable, to cause or allow the water to run to waste so far as may be necessary for enabling the works to be carried out or operated.

(4) A person who is guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(5) On the conviction of a person under this section, the court may—

(a) order that the well, borehole or other work to which the offence relates shall be effectively sealed; or

(b) make such other order as appears to the court to be necessary to prevent waste of water.

(6) If any person fails to comply with an order under subsection (5) above, then, without prejudice to any penalty for contempt of court, the court may, on the application of [the [appropriate agency]], authorise [the appropriate agency] to take such steps as may be necessary to execute the order; and any expenses incurred in taking any such steps shall be recoverable summarily as a civil debt from the person convicted.

(7) Any person designated for the purpose by [the [appropriate agency]] shall, on producing some duly authenticated document showing his authority, have a right at all reasonable times—

(a) to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this section on or in connection with the premises;

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(b) to enter any premises for the purpose of executing any order of the court under this section which [the [appropriate agency]] has been authorised to execute in those premises.

(8) Part I of Schedule 6 to this Act shall apply to the rights of entry conferred by subsection (7) above.

[(9) In this section "the appropriate agency" means—

(a) the Environment Agency, in relation to a well, borehole or other work in England;

(b) the NRBW, in relation to a well, borehole or other work in Wales.]

NOTES

Derivation

Sub-ss (1)–(3) derived from the Water Act 1945, s 14(9), the Water Resources Act 1963, s 136(2), (4), (6), Sch 14, Part II; sub-ss (4)–(6) derived from the Water Act 1945, s 14(10), the Water Act 1948, s 5(4), the Criminal Justice Act 1982, s 46, the Water Act 1989, s 190(1), Sch 25, para 7(1)(a); sub-ss (7), (8) derived from the Water Act 1945, s 14(12), the Water Act 1973, s 40(2), Sch 8, para 48, the Water Act 1989, s 190(1), (3), Sch 25, para 7(1)(b), Sch 27, Part I.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (6): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 101.

Sub-s (6): words "appropriate Agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 236(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (6): words "the appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 236(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (7): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 101.

Sub-s (7): words "appropriate Agency" in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 236(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (9): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 236(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

72 Contamination of water sources

(1) Subject to subsections (2) and (3) below, a person is guilty of an offence under this section if he is guilty of any act or neglect whereby the water in any waterworks which is used or likely to be used—

(a) for human consumption or domestic purposes; or

(b) for manufacturing food or drink for human consumption,

is polluted or likely to be polluted.

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(2) Nothing in this section shall be construed as restricting or prohibiting any method of cultivation of land which is in accordance with the principles of good husbandry.

(3) Nothing in this section shall be construed as restricting or prohibiting the reasonable use of oil or tar on any highway maintainable at public expense so long as the highway authority take all reasonable steps for preventing—

(a) the oil or tar; and

(b) any liquid or matter resulting from the use of the oil or tar,

from polluting the water in any waterworks.

(4) A person who is guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum and, in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued after conviction;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(5) In this section "waterworks" includes—

(a) any spring, well, adit, borehole, service reservoir or tank; and

(b) any main or other pipe or conduit of a water undertaker[; and

(c) any pipe or conduit of a licensed water supplier].

NOTES

Derivation

Sub-ss (1)–(3), (5) derived from the Water Act 1945, s 21(1), (4), the Water Act 1989, Sch 25, para 7(4), and give effect to Law Commission Recommendation No 21, Cmnd 1483; sub-s (4) derived from the Water Act 1945, s 21(3), the Control of Pollution Act 1974, s 99, Sch 2, para 16, the Criminal Justice Act 1982, ss 38,46.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (5): para (c) and word "; and" immediately preceding it inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 21.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

73 Offences of contaminating, wasting and misusing water etc

(1) If any person who is the owner or occupier of any premises to which a supply of water is provided by a water undertaker [or licensed water supplier] intentionally or negligently causes or suffers any water fitting for which he is responsible to be or remain so out of order, so in need of repair or so constructed or

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adapted, or to be so used—

(a) that water in a water main or other pipe of a water undertaker, or in a pipe connected with such a water main or pipe, is or is likely to be contaminated by the return of any substance from those premises to that main or pipe;

(b) that water that has been supplied by the undertaker [or supplier] to those premises is or is likely to be contaminated before it is used; or

(c) that water so supplied is or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

[(1A) In any proceedings under subsection (1) above it shall be a defence to prove—

(a) that the contamination or likely contamination, or the wastage, misuse or undue consumption, was caused (wholly or mainly) by the installation, alteration, repair or connection of the water fitting on or after 1st July 1999;

(b) that the works were carried out by or under the direction of an approved contractor within the meaning of the Water Supply (Water Fittings) Regulations 1999; and

(c) that the contractor certified to the person who commissioned those works that the water fitting complied with the requirements of those regulations.]

(2) Any person who uses any water supplied to any premises by a water undertaker for a purpose other than one for which it is supplied to those premises shall, unless the other purpose is the extinguishment of a fire, be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(3) Where a person has committed an offence under subsection (2) above, the water undertaker in question shall be entitled to recover from that person such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(4) For the purposes of this section the owner or occupier of any premises shall be regarded as responsible for every water fitting on the premises which is not a water fitting which a person other than the owner or, as the case may be, occupier is liable to maintain.

NOTES

Derivation

This section derived from the Water Act 1989, s 61.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words “or licensed water supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 22(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): in para (b) words “or supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 22(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

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Sub-s (1A): inserted by SI 1999/1148, reg 8; for circumstances in which this amendment does not apply see reg 2 thereof.

Date in force: 1 July 1999: see SI 1999/1148, reg 1(1).

74 Regulations for preventing contamination, waste etc and with respect to water fittings

(1) The Secretary of State may by regulations make such provision as he considers appropriate for any of the following purposes, that is to say—

(a) for securing—

(i) that water in a water main or other pipe of a water undertaker is not contaminated; and

(ii) that its quality and suitability for particular purposes is not prejudiced,

by the return of any substance from any premises to that main or pipe;

(b) for securing that water which is in any pipe connected with any such main or other pipe or which has been supplied to any premises by a water undertaker [or licensed water supplier] is not contaminated, and that its quality and suitability for particular purposes is not prejudiced, before it is used;

(c) for preventing the waste, undue consumption and misuse of any water at any time after it has left the pipes of a water undertaker for the purpose of being supplied by that undertaker [or a licensed water supplier] to any premises; and

(d) for securing that water fittings installed and used by persons to whom water is or is to be supplied by a water undertaker [or licensed water supplier] are safe and do not cause or contribute to the erroneous measurement of any water or the reverberation of any pipes.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may, for any of the purposes specified in that subsection, make provision in relation to such water fittings as may be prescribed—

(a) for forbidding the installation, connection or use of the fittings if they have not been approved under the regulations or if they contravene the regulations;

(b) for requiring the fittings, for the purposes of provision made by virtue of paragraph (a) above, to be of such a size, nature, strength or workmanship, to be made of such materials or in such a manner or to conform to such standards as may be prescribed by or approved under the regulations;

(c) for imposing such other requirements as may be prescribed with respect to the installation, arrangement, connection, testing, disconnection, alteration and repair of the fittings and with respect to the materials used in their manufacture;

(d) for the giving, refusal and revocation, by prescribed persons, of approvals required for the purposes of the regulations; and

(e) for such approvals to be capable of being made subject to such conditions as may be prescribed and for the modification and revocation of any such condition.

(3) Without prejudice as aforesaid, regulations under this section may—

(a) impose separate or concurrent duties with respect to the enforcement of the regulations on water undertakers, local authorities and such other persons as may be prescribed;

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(b) confer powers on a water undertaker or local authority to carry out works and take other steps, in prescribed circumstances, for remedying any contravention of the regulations;

(c) provide for the recovery by a water undertaker or local authority of expenses reasonably incurred by the undertaker or authority in the exercise of any power conferred by virtue of paragraph (b) above;

(d) repeal or modify the provisions of section 73 above or section 75 below;

(e) provide for a contravention of the regulations to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be prescribed;

(f) require prescribed charges to be paid to persons carrying out functions under the regulations;

(g) enable the Secretary of State to authorise such relaxations of and departures from such of the requirements of the regulations as may be prescribed, to make any such authorisation subject to such conditions as may be prescribed and to modify or revoke any such authorisation or condition;

(h) enable the Secretary of State to authorise a water undertaker or local authority (either instead of the Secretary of State or concurrently with him) to exercise any power conferred on the Secretary of State by regulations made by virtue of paragraph (g) above; and

(i) require disputes arising under the regulations to be referred to arbitration and for determinations under the regulations to be subject to such rights of appeal as may be prescribed.

(4) Without prejudice to sections 84 and 170 below, any person designated in writing for the purposes of this subsection in such manner as may be prescribed may—

(a) enter any premises for the purpose of—

(i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings or with respect to the waste or misuse of water is being or has been contravened;

(ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under this section should be exercised or performed; or

(iii) exercising any such power or performing any such duty;

or

(b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under this section.

(5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsection (4) above.

(6) The power of the Secretary of State under this section to make regulations with respect to the matters specified in the preceding provisions of this section shall include power, by regulations under this section—

(a) to modify the operation of Schedule 2 to the Water Consolidation (Consequential Provisions)

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Act 1991 in relation to any byelaws made under section 17 of the Water Act 1945 which have effect by virtue of paragraph 19 of Schedule 26 to the Water Act 1989 and that Schedule 2; and

(b) to revoke or amend any such byelaws;

but, so long as any such byelaws so have effect, the references in sections 47(2)(g), 53(2)(c) and 55(4) above to such regulations under this section as are prescribed shall have effect as including references to those byelaws.

(7) Any sums received by the Secretary of State in consequence of the provisions of any regulations under this section shall be paid into the Consolidated Fund.

(8) In this section "safe" has the same meaning as in Part II of the Consumer Protection Act 1987.

NOTES

Derivation

Sub-ss (1)–(4), (7), (8) derived from the Water Act 1989, s 62(1)–(4), (6), (7); sub-s (6) derived from the Water Act 1989, Sch 26, para 19(1)–(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (b) words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 23(a).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): in para (c) words "or a licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 23(b).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): in para (d) words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 23(c).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water Supply (Water Fittings) Regulations 1999, SI 1999/1148.
Water Supply (Water Fittings) (Amendment) Regulations 1999, SI 1999/1506.
Water Supply Regulations 2010, SI 2010/991.
Water Supply (Water Quality) (Amendment) Regulations 2011, SI 2011/14.

75 Power to prevent damage and to take steps to prevent contamination, waste etc

(1) Without prejudice to any power conferred on water undertakers by regulations under section 74

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above, where a water undertaker which provides a supply of water to any premises has reason for believing—

(a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the undertaker;

(b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that main or pipe;

(c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the undertaker to those premises is being or is likely to be contaminated before it is used; or

(d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.

[(1A) Without prejudice to any power conferred on water undertakers by regulations under section 74 above, where a water undertaker whose supply system is used for the purpose of a licensed water supplier making a supply of water to any premises has reason for believing—

(a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the water undertaker;

(b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that pipe or main;

(c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the supplier to those premises is being or is likely to be contaminated before it is used; or

(d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.]

(2) The power conferred by this subsection in relation to any premises is—

(a) where the case constitutes an emergency, power to disconnect the service pipe or otherwise to cut off the supply of water to those premises; and

(b) in any other case, power to serve notice on the consumer requiring him to take such steps as may be specified in the notice as necessary to secure that the damage, contamination, waste, misuse or undue consumption ceases or, as the case may be, does not occur.

(3) Where a water undertaker, in exercise of the power conferred by virtue of subsection (2)(a) above, disconnects a service pipe to any premises or otherwise cuts off any supply of water to any premises, the undertaker shall, as soon as reasonably practicable after the supply is disconnected or cut off, serve a notice on the consumer specifying the steps which that person is required to take before the undertaker will restore the supply.

(4) The steps specified in a notice under subsection (3) above shall be the steps necessary to secure that, as the case may be—

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(a) the damage, contamination, waste, misuse or undue consumption; or

(b) the likelihood of damage, contamination, waste, misuse or undue consumption,

would not recur if the supply were restored.

(5) A water undertaker which fails, without reasonable excuse, to serve a notice in accordance with subsection (3) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) A notice served for the purposes of subsection (2)(b) above shall—

(a) specify the period, not being less than the period of seven days beginning with the day after the service of the notice, within which the steps specified in the notice are to be taken; and

(b) set out the powers of the undertaker under subsections (7) to (9) below.

(7) Where a water undertaker has served a notice for the purposes of subsection (2)(b) above in relation to any premises and—

(a) the case becomes an emergency; or

(b) the premises appear to be unoccupied and the steps specified in the notice are not taken before the end of the period so specified,

the undertaker may disconnect the service pipe to those premises or otherwise cut off the supply of water to those premises.

(8) Subsections (3) to (5) above shall apply where a water undertaker exercises its power under subsection (7) above as they apply where such an undertaker exercises its power by virtue of subsection (2)(a) above.

(9) Where, in a case not falling within subsection (7)(a) or (b) above, any steps specified in a notice served by a water undertaker for the purposes of subsection (2)(b) above have not been taken by the end of the period so specified, the water undertaker shall have power—

(a) to take those steps itself; and

(b) subject to subsection (10) below, to recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served;

and any steps taken by a water undertaker by virtue of paragraph (a) above shall be necessary works for the purposes of Chapter II of this Part.

(10) Where any steps are taken by virtue of this section and it is shown that, in the circumstances of the case, those steps were not necessary as mentioned in subsection (2) or, as the case may be, (4) above, the water undertaker in question—

(a) shall not be entitled to recover any expenses incurred by it in taking those steps; and

(b) shall be liable to pay to any other person who took any of those steps an amount equal to any expenses reasonably incurred by that person in taking any of those steps.

[(11) Where the power conferred by subsection (2) above on a water undertaker is exercisable by virtue of subsection (1A) above—

(a) the references to the consumer in subsections (2) and (3), in relation to a supply of water to

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any premises, shall be taken to be references to the person in respect of whom the supply is made; and

(b) the undertaker shall serve on the licensed water supplier providing the supply a copy of any notice under this section which is served on the person mentioned in paragraph (a) above.

(12) In subsection (1A) above, the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.]

NOTES

Derivation

This section derived from the Water Act 1989, s 63.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 24(1), (2).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-ss (11), (12): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 24(1), (3).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

[76 Temporary bans on use]

[(1) A water undertaker may prohibit one or more specified uses of water supplied by it if it thinks that it is experiencing, or may experience, a serious shortage of water for distribution.

(2) Only the following uses of water may be prohibited—

(a) watering a garden using a hosepipe;

(b) cleaning a private motor-vehicle using a hosepipe;

(c) watering plants on domestic or other non-commercial premises using a hosepipe;

(d) cleaning a private leisure boat using a hosepipe;

(e) filling or maintaining a domestic swimming or paddling pool;

(f) drawing water, using a hosepipe, for domestic recreational use;

(g) filling or maintaining a domestic pond using a hosepipe;

(h) filling or maintaining an ornamental fountain;

(i) cleaning walls, or windows, of domestic premises using a hosepipe;

(j) cleaning paths or patios using a hosepipe;

(k) cleaning other artificial outdoor surfaces using a hosepipe.

(3) The Minister may by order—

(a) add a non-domestic purpose to the list in subsection (2);

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(b) remove a purpose from the list in subsection (2).

(4) A prohibition must specify—

(a) the date from which it applies, and

(b) the area to which it applies (which may be all or part of the undertaker's area).

(5) A person who contravenes a prohibition—

(a) is guilty of an offence, and

(b) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) A water undertaker which issues a prohibition must make arrangements for a reasonable reduction of charges which are made in respect of prohibited uses (including arrangements for repayment or credit where charges are paid in advance).

(7) A water undertaker may vary or revoke a prohibition.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with ss 76A–76C, for this section as originally enacted, by the Flood and Water Management Act 2010, s 36.

Date in force: 1 October 2010: see SI 2010/2169, art 4, Schedule; for transitional provisions see art 5 thereof.

[76A Temporary bans: supplemental]

[(1) A prohibition may—

(a) apply to one or more specified uses of water generally or only in specified cases or circumstances (which may be specified by reference to classes of user, timing or in any other way);

(b) be subject to exceptions (which may be absolute or conditional, and may be specified by reference to classes of user, timing or in any other way).

(2) The Minister may by order—

(a) provide for exceptions to a category of use in section 76(2) (whether or not added under section 76(3));

(b) provide that a specified activity, or an activity undertaken in specified circumstances, is to be or not to be treated as falling within a category of use in section 76(2) (whether or not added under section 76(3));

(c) define a word or phrase used in section 76(2) (whether or not added under section 76(3)).

(3) In particular, an order may—

(a) restrict a category of use by reference to how water is drawn;

(b) frame an exception by reference to ownership of land by a specified person or class of person;

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(c) provide for a process that involves the use of a hosepipe at any point to be included in the meaning of “using a hosepipe”;

(d) provide for a reference to a thing to include a reference to something that is or may be used in connection with it (such as, for example, for a reference to a vehicle to include a reference to a trailer).

(4) In this section and section 76 “the Minister” means—

(a) the Secretary of State in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in England, and

(b) the Welsh Ministers in relation to prohibitions which may be issued by water undertakers whose areas are wholly or mainly in Wales.

(5) Subject to provision under subsection (2), a reference to a hosepipe in section 76 includes a reference to anything designed, adapted or used to serve the same purpose as a hosepipe.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with ss 76, 76B, 76C, for s 76 as originally enacted, by the Flood and Water Management Act 2010, s 36.

Date in force (for the purpose of making an order under sub-s (2)): 1 September 2010: see SI 2010/2169, art 3(3); for transitional provisions see art 5 thereof.

Date in force (for remaining purposes): 1 October 2010: see SI 2010/2169, art 4, Schedule; for transitional provisions see art 5 thereof.

Subordinate Legislation

Water Use (Temporary Bans) Order 2010, SI 2010/2231 (made under sub-s (2)).

[76B Temporary bans: procedure]

[(1) A prohibition takes effect only if this section is complied with.

(2) Before the period for which a prohibition is to apply the water undertaker must give notice of the prohibition and its terms—

(a) in at least two newspapers circulating in the area to which it is to apply, and

(b) on the water undertaker’s internet website.

(3) The notice must give details of how to make representations about the proposed prohibition.

(4) The variation of a prohibition is to be treated as a prohibition for the purposes of this section.

(5) A water undertaker must give notice of a revocation of a prohibition—

(a) in at least two newspapers circulating in the area to which it is to apply, and

(b) on the water undertaker’s internet website.

(6) The revocation may not take effect until at least one notice under subsection (5) has been given.]

NOTES

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Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with ss 76, 76A, 76C, for s 76 as originally enacted, by the Flood and Water Management Act 2010, s 36.

Date in force: 1 October 2010: see SI 2010/2169, art 4, Schedule; for transitional provisions see art 5 thereof.

[76C Orders under sections 76 and 76A]

[(1) Section 213 applies to orders under section 76(3) or 76A(2) as it applies to regulations.

(2) But—

(a) an order made by the Secretary of State under section 76(3) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament,

(b) an order made by the Welsh Ministers under section 76(3) may not be made unless a draft has been laid before and approved by resolution of the National Assembly for Wales, and

(c) an order made by the Welsh Ministers under section 76A(2) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with ss 76, 76A, 76B, for s 76 as originally enacted, by the Flood and Water Management Act 2010, s 36.

Date in force: 1 October 2010: see SI 2010/2169, art 4, Schedule; for transitional provisions see art 5 thereof.

Local authority functions

77 General functions of local authorities in relation to water quality

(1) It shall be the duty of every local authority to take all such steps as they consider appropriate for keeping themselves informed about the wholesomeness and sufficiency of water supplies provided to premises in their area, including every private supply to any such premises.

(2) It shall be the duty of a local authority to comply with any direction given by the Secretary of State to that authority, to authorities of a description applicable to that authority or to local authorities generally as to—

(a) the cases and circumstances in which they are or are not to exercise any of the powers conferred on them by this Chapter in relation to private supplies; and

(b) the manner in which those powers are to be exercised.

(3) The Secretary of State may by regulations make such provision, supplementing the provisions of this section and of sections 78 and 79(2) below, as he considers appropriate for—

(a) imposing duties and conferring powers on local authorities with respect to the acquisition of information about the quality and sufficiency of water supplies provided to premises in their areas; and

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(b) regulating the performance of any duty imposed by or under any of those provisions.

(4) Without prejudice to the generality of subsection (3) above, regulations under that subsection may—

(a) prescribe the matters to be taken into account by a local authority in determining, for the purposes of subsection (1) above, what is appropriate;

(b) provide, for the purposes of the exercise or performance of any power or duty conferred or imposed on a local authority by or under any of the provisions mentioned in subsection (3) above, for such samples of water to be taken and analysed at such times and in such manner as may be prescribed;

(c) authorise local authorities to exercise or perform any such power or duty through prescribed persons;

(d) provide for the recovery by a local authority from prescribed persons of such amounts as may be prescribed in respect of expenses reasonably incurred by the authority in the exercise of any such power or the performance of any such duty.

NOTES

Derivation

This section derived from the Water Act 1989, s 56(1), (4)–(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Water Supply (Water Quality) Regulations 2000, SI 2000/3184 (made under sub-ss (3), (4)).
Water Supply (Water Quality) Regulations 2000 (Amendment) Regulations 2007, SI 2007/2734 (made under sub-ss (3), (4)).
Private Water Supplies Regulations 2009, SI 2009/3101 (made under sub-ss (3), (4)).
Private Water Supplies (Wales) Regulations 2010, SI 2010/66 (made under sub-ss (3), (4)).
Private Water Supplies (Wales) (Amendment) Regulations 2010, SI 2010/147 (made under sub-ss (3), (4)).
Water Supply (Water Quality) Regulations 2010, SI 2010/994 (made under sub-ss (3), (4)).
Private Water Supplies (Wales) (Amendment) (No 2) Regulations 2010, SI 2010/1384 (made under sub-ss (3), (4)).

78 Local authority functions in relation to undertakers' supplies

(1) It shall be the duty of a local authority to notify any water undertaker of anything appearing to the authority to suggest—

(a) that any supply by that undertaker[, or by a licensed water supplier using that undertaker's supply system,] of water for domestic or food production purposes to any premises in the area of that authority is, has been or is likely to become unwholesome or (so far as any such premises are concerned) insufficient for domestic purposes;

(b) that the unwholesomeness or insufficiency of any such supply is, was or is likely to be such

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as to cause a danger to life or health; or

(c) that the duty imposed on that undertaker by virtue of section 68(1)(b) above is being, has been or is likely to be so contravened as to affect any supply of water to premises in that area.

(2) Where a local authority have notified a water undertaker of any such matter as is mentioned in subsection (1) above, it shall be the duty of that authority, if they are not satisfied that all such remedial action as is appropriate will be taken by the undertaker, to inform the Secretary of State about the contents of the notification.

[(3) In subsection (1)(a) above, the reference to the water undertaker's supply system shall be construed in accordance with section 17B(5) above.]

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 56(2), the Food Safety Act 1990, s 55(3); sub-s (2) derived from the Water Act 1989, s 56(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (a) words from ", or by a" to "undertaker's supply system," in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 26(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 26(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

79 Local authority functions where piped supplies insufficient or unwholesome

(1) This section applies to a case in which it is not practicable at reasonable cost for a water undertaker, by supplying water in pipes, to provide or maintain such a supply of wholesome water to any particular premises in its area as (so far as those premises are concerned) is sufficient for domestic purposes.

(2) In any case to which this section applies, it shall be the duty of the local authority in whose area the premises in question are situated, if they are satisfied—

(a) that the insufficiency or unwholesomeness of the supply of water for domestic purposes to those premises is such as to cause a danger to life or health; and

(b) that it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as is sufficient for those purposes,

to require the undertaker, under subsection (3) below, to provide a supply of water to those premises otherwise than in pipes.

(3) Where, in a case to which this section applies—

(a) the insufficiency or unwholesomeness of the supply of water for domestic purposes to the

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premises in question is such as to cause a danger to life or health;

(b) it is practicable at reasonable cost for the water undertaker, by providing it otherwise than in pipes, to provide to those premises such a supply of wholesome water as (so far as those premises are concerned) is sufficient for domestic purposes; and

(c) the local authority in whose area those premises are situated notify the undertaker of the danger to life or health and require the undertaker to provide a supply otherwise than in pipes,

it shall be the duty of the undertaker, for such period as may be required by that local authority, to provide any supply to those premises which it is practicable at reasonable cost to provide otherwise than in pipes and which it is required to provide by that authority.

(4) Where under this section a local authority require the provision by a water undertaker of a supply of water to any premises, that authority—

(a) shall be liable to the undertaker for any charges payable by virtue of Chapter I of Part V of this Act in respect of the provision of that supply; but

(b) shall have power to recover the whole or any part of any charges paid by virtue of this subsection from the owner or occupier of the premises to which the supply is provided.

(5) In this section references to the provision of a supply of water to any premises otherwise than in pipes shall have effect, in a case in which it is practicable at reasonable cost to provide a supply (whether or not in pipes) to a place within a reasonable distance of those premises, as including references to the provision of a supply to that place.

(6) The duty of a water undertaker under subsection (3) above shall be enforceable under section 18 above by [the Authority].

NOTES

Derivation

Sub-ss (1)–(3) derived from the Water Act 1989 ss 55(1), 56(2); sub-ss (4)–(6) derived from the Water Act 1989, s 55(2)–(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (6): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

80 Remedial powers of local authorities in relation to private supplies

(1) Subject to the following provisions of this section, where a local authority are satisfied in relation to any premises in their area which are supplied with water for domestic or food production purposes by means of a private supply—

(a) that any water which is being, has been or is likely to be supplied for those purposes to those premises by means of that private supply is not, was not or, as the case may be, is likely not to be wholesome; or

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(b) that that private supply is failing, has failed or is likely to fail to provide to any house on those premises such a supply of wholesome water as (so far as that house is concerned) is sufficient for domestic purposes,

the authority may serve a notice in relation to that private supply on one or more of the relevant persons.

(2) A notice under this section in relation to a private supply of water to any premises shall—

(a) give particulars of the matters mentioned in subsection (1) above in respect of which the notice is served;

(b) specify the steps which, in the opinion of the authority serving the notice, are required to be taken for ensuring that there is a supply of water to those premises which is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;

(c) specify a period, ending not less than twenty-eight days after the day on which the notice is served, within which any representations or objections with respect to the notice must be received by that authority; and

(d) state the effect in relation to that notice of section 81(2) and (3) below.

(3) Subject to sections 81 and 82 below, where a local authority serve a notice under this section on any relevant person they may do one or more of the following, that is to say—

(a) by that notice designate as steps to be taken by the authority themselves such of the steps specified in the notice as they consider it appropriate so to designate;

(b) by that notice require that person, within such reasonable period as may be specified in the notice, to take one or more of the steps so specified;

(c) by that notice require that person, at such times as may be determined in accordance with provision contained in the notice, to make to another relevant person or to that authority such payments as may be so determined in respect of expenses reasonably incurred by that other person or that authority in taking any step specified in the notice;

(d) by that notice undertake from time to time to make such payments to that person as may be so determined in respect of expenses reasonably incurred by that person in taking any step specified in the notice.

(4) The power of a local authority to serve a notice under this section specifying the steps which are required to be taken in relation to any source from which a private supply is provided both to premises in the area of that authority and to premises in the area of another local authority shall be exercisable only where—

(a) the other authority consent to the service of the notice; or

(b) the authorities act jointly in exercising their respective powers under this section in relation to that source.

(5) The powers conferred by this section and sections 81 and 82 below shall be so exercised in relation to a private supply of water to any premises where there is no house as to secure that no local authority are required to bear any of the expenses incurred (whether by the authority or by any other person) in taking any of the steps for ensuring that the supply is wholesome which are specified in a notice under this section.

(6) The steps that a relevant person may be required by a notice under this section to take in relation to any premises shall include—

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(a) requiring a supply of water to be provided to those premises by a water undertaker or by any other person; and

(b) taking such steps for the purpose of securing that such a requirement is complied with, and of enabling such a supply to be so provided, as may be specified in the notice.

(7) For the purposes of this section and sections 81 to 83 below the relevant persons, in relation to a private supply of water to any premises in the area of a local authority, are—

(a) the owners and occupiers of those premises; and

(b) whether or not the source of the private supply is in that authority's area, the owners and occupiers of the premises where that source is situated and any other person who exercises powers of management or control in relation to that source;

and in sections 81 to 83 below a notice under this section is referred to as a private supply notice.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 57(1), the Food Safety Act 1990, s 55(4); sub-ss (2)–(6) derived from the Water Act 1989, s 57(2)–(6); sub-s (7) derived from the Water Act 1989, ss 57(7), 164(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

81 Confirmation of private supply notices

(1) Subject to subsection (2) below, a private supply notice served by a local authority shall not take effect until the end of the period specified in the notice as the period within which representations or objections with respect to the notice must be received by that authority.

(2) Where any written representation or objection with respect to a private supply notice served by a local authority is received by the authority, before the end of the period specified in the notice, from a person on whom the notice was served, that notice shall not take effect unless—

(a) the notice is submitted by the authority to the Secretary of State and is confirmed by him either with or without modifications; or

(b) the representation or objection is withdrawn.

(3) If a local authority submit a private supply notice to the Secretary of State for confirmation, the Secretary of State—

(a) shall consider whether the notice should be confirmed and whether, if it is confirmed, it should be confirmed with or without modifications;

(b) may, with respect to the matters specified in the notice or any proposed modification of it, direct the local authority to serve a private supply notice, in such terms as may be specified in the direction, on any relevant person who has not previously been served with such a notice;

(c) may, for the purposes of paragraph (a) or (b) above cause a local inquiry to be held or afford—

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(i) to the local authority; and

(ii) to every person who has made representations or objections with respect to the notice or any proposed direction under paragraph (b) above,

an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose; and

(d) if he is satisfied that the person on whom any notice to be served in pursuance of a direction under paragraph (b) above has had a proper opportunity of having his representations or objections with respect to the proposal for the direction considered, may dispense, in relation to the notice so served, with the provisions of subsections (1) and (2) above and of section 80(2)(c) and (d) above.

(4) Where the Secretary of State confirms a private supply notice (whether with or without modifications)—

(a) he, or if he so directs, the local authority concerned shall serve notice of that confirmation on every person originally served with the notice under section 80 above; and

(b) that notice shall take effect, with any modifications made by the Secretary of State, at such time as may be specified in the notice served under this subsection.

NOTES

Derivation

This section derived from the Water Act 1989, s 58(1)–(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

82 Enforcement and variation of private supply notice

(1) Where any relevant person who is required by virtue of a private supply notice to take any step in relation to any premises fails to take that step within the period specified in the notice, the authority which served the notice may, in accordance with any applicable provision having effect by virtue of section 83 or 84 below, take that step themselves.

(2) Where any step is taken by a local authority in relation to any premises by virtue of subsection (1) above—

(a) the authority may recover from the person who failed to take that step within the specified period any expenses reasonably incurred by the authority in taking that step; and

(b) for the purposes of any requirement under which payments are required to be made to that person by any person other than the authority, sums paid by virtue of paragraph (a) above in respect of the taking of any step shall be deemed to be expenses incurred in the taking of that step by the person who failed to take it.

(3) Nothing in this Act shall confer any right of action on any person in respect of any loss or damage

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sustained by that person in consequence of the failure by any other person to take any step specified in a private supply notice.

(4) Any sum required to be paid to any person by virtue of any requirement or undertaking contained in a private supply notice shall be recoverable by that person from the person who is required to pay it.

(5) Any requirement which—

(a) is imposed by virtue of a private supply notice on the owner or occupier of any premises; and

(b) is expressed to bind those premises in relation to the owners or occupiers from time to time,

shall bind successive owners or, as the case may be, occupiers of those premises and shall be a local land charge.

(6) Subject to subsection (7) below, a local authority may by notice served on any person modify or revoke the effect in relation to that person of any private supply notice or notice under this subsection (including a notice which has been confirmed, with or without modifications, by the Secretary of State).

(7) Sections 80(2)(c) and (d) and 81 above shall apply, as they apply in relation to a private supply notice, in relation to any notice served by a local authority on any person under subsection (6) above except where the notice—

(a) extends the period within which any step is required to be taken by that person; or

(b) discharges, postpones or abates any obligation of that person to make a payment to the local authority.

NOTES

Derivation

Sub-ss (1), (2), (5)–(7) derived from the Water Act 1989, s 58(5), (6), (8)–(10); sub-ss (3), (4) derived from the Water Act 1989, s 58(7).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

83 Application of certain powers to local authorities in relation to private supplies

(1) For the purposes of the taking of any steps falling to be taken by a local authority by virtue of a designation under subsection (3)(a) of section 80 above the provisions of Part VI of this Act shall have effect—

(a) as if the relevant works powers, so far as conferred on a water undertaker for the purpose of carrying out its functions, were also conferred on a local authority for the purpose of ensuring that a supply of water provided by means of a private supply to any premises in the authority's area is both wholesome and (so far as any house on those premises is concerned) sufficient for domestic purposes;

(b) as if any such power, so far as it is conferred on a water undertaker in relation to things

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belonging to or operated or used by the undertaker for the purposes of its functions, were conferred by virtue of paragraph (a) above on a local authority in relation to things belonging to or operated or used by that authority, or a relevant person, in connection with the provision of water by means of a private supply;

(c) as if references to a water undertaker in any provision of Part VI of this Act relating to a relevant works power, except the references in sections 181 and 182 below, included references to a local authority; and

(d) as if the making by any person in pursuance of a private supply notice of any payment in respect of sums incurred in the laying of any pipe entitled that person, for the purposes of section 179(1) below, to an interest in the pipe.

(2) Where by virtue of this Act a local authority have power under Part VII of the Local Government Act 1972 (miscellaneous powers of a local authority) to acquire (whether compulsorily or otherwise) any land or right over land for the purpose of ensuring that private supplies of water to premises in their area are both wholesome and (so far as houses on those premises are concerned) sufficient for domestic purposes, that power shall include power to acquire land or any interest or right in or over land in order, for that purpose, to dispose of the land or the interest or right to a person who is a relevant person in relation to such a private supply.

(3) In this section "relevant works powers" means the powers conferred on water undertakers by sections 158, 159, 161, 163 and 165 below.

NOTES

Derivation

Sub-ss (1), (3) derived from the Water Act 1989, s 164(1); sub-s (2) derived from the Water Act 1989, s 164(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

84 Local authority rights of entry etc

(1) Any person designated for the purpose by a local authority within whose area any waterworks are situated shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is or has been any contravention of section 72 above in relation to those waterworks.

(2) Any person designated in writing for the purpose by a local authority may—

(a) enter any premises for the purpose of—

(i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings, or with respect to the waste or misuse of water, is being or has been contravened;

(ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under section 74 above should be exercised or performed; or

(iii) exercising any such power or performing any such duty;

or

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(b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that section.

(3) Any person designated in writing for the purpose by any local authority may—

(a) enter any premises for the purpose, in relation to any private supply, of—

(i) determining whether, and if so in what manner, any power or duty conferred or imposed on that authority by or under any of sections 77 to 82 above should be exercised or performed; or

(ii) exercising any such power or performing any such duty;

(b) enter any premises to which a supply of water is provided by a water undertaker for the purpose, in relation to a supply so provided of—

(i) determining whether, and if so in what manner, any such power should be exercised or any such duty performed; or

(ii) exercising any such power or performing any such duty;

or

(c) carry out such inspections, measurements and tests on premises entered by that person or of articles found on any such premises, and take away such samples of water or of any land or articles, as the local authority—

(i) consider appropriate for the purposes of any such power or duty; and

(ii) have authorised that person to carry out or take away.

(4) Part I of Schedule 6 to this Act shall apply to the right of entry conferred by subsection (1) above; but nothing in that subsection or in that Part of that Schedule shall entitle any person designated for the purposes of that subsection by a local authority to have access to any waterworks belonging to a water undertaker.

(5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsections (2) and (3) above.

(6) In subsection (1) above the reference to a local authority includes a reference to a county council and to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and any expenses incurred by the Common Council of the City of London in the exercise of their functions under that subsection shall be defrayed as part of their general expenses.

(7) In this section "waterworks" has the same meaning as in section 72 above.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1945, s 21(2), the Water Act 1989, Sch 25, para 7(4); sub-s (2) derived from the Water Act 1989, s 62(4); sub-s (3) derived from the Water Act 1989, s 59(2); sub-s (4) derived from the Water Act 1945, s 21(2), (2A), the Water Act 1989, Sch 25, para 7(4); sub-s (6) derived from the Water Act 1945, ss 53, 59(1), the London Government Act 1963, Sch 11, Part I, para 27.

Initial Commencement

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Specified date
Specified date: 1 December 1991: see s 223(2).

Extent
This section does not extend to Scotland: see s 223(3).

Subordinate Legislation
Water Supply (Water Fittings) Regulations 1999, SI 1999/1148.

85 Local authority power to obtain information for the purposes of functions under Chapter III

(1) Subject to subsection (2) below, a local authority may serve on any person a notice requiring him to furnish that authority, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by that authority for the purpose of exercising or performing any power or duty conferred or imposed on that authority by or under any of sections 77 to 82 above.

(2) The Secretary of State may by regulations make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.

(3) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under subsection (1) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

NOTES

Derivation
This section derived from the Water Act 1989, s 59(1), (4), (5).

Initial Commencement
Specified date
Specified date: 1 December 1991: see s 223(2).

Extent
This section does not extend to Scotland: see s 223(3).

Transfer of Functions
Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Assessors for the enforcement of water quality

86 Assessors for the enforcement of water quality

(1) The Secretary of State may for the purposes of this section appoint persons to act on his behalf . . . in relation to some or all of—

(a) the powers and duties conferred or imposed on him by or under sections 67 to 70 and 77 to 82 above; and

(b) such other powers and duties in relation to the quality and sufficiency of water supplied [using a water undertaker's supply system] as are conferred or imposed on him by or under any other enactments.

[(1A) Subject to subsection (1B) below, the Secretary of State shall designate one such person as the Chief Inspector of Drinking Water.

(1B) If the function of the Secretary of State under subsection (1) above is transferred to any extent to

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the Assembly—

(a) subject to paragraph (b) below, the Assembly may designate one such person appointed by it as the Chief Inspector of Drinking Water for Wales; but

(b) if the person designated by the Assembly is the same as the person designated by the Secretary of State as the Chief Inspector of Drinking Water, he shall be known as such in both capacities.]

(2) [An inspector] appointed under this section shall—

(a) carry out such investigations as the Secretary of State may require him to carry out for the purpose of—

(i) ascertaining whether any duty or other requirement imposed on that undertaker [or a licensed water supplier by or under any of sections 68, 69 and 79 above or imposed on a relevant person (as defined in subsection (1A) of section 70 above) by or under that section] is being, has been or is likely to be contravened; or

(ii) advising the Secretary of State as to whether, and if so in what manner, any of the powers of the Secretary of State in relation to such a contravention, or any of the powers (including the powers to make regulations) which are conferred on him by or under any of sections 67 to 70 and 77 to 82 above should be exercised;

and

(b) make such reports to the Secretary of state with respect to any such investigation as the Secretary of State may require.

(3) Without prejudice to the powers conferred by subsection (4) below, it shall be the duty of a water undertaker[, licensed water supplier or other relevant person (as defined in section 70(1A) above)]—

(a) to give [an inspector] appointed under this section all such assistance; and

(b) to provide [an inspector] so appointed with all such information,

as that person may reasonably require for the purpose of carrying out any such investigation as is mentioned in subsection (2) above.

(4) Any [inspector] appointed under this section who is designated in writing for the purpose by the Secretary of State may—

(a) enter any premises for the purpose of carrying out any such investigation as is mentioned in subsection (2) above;

(b) carry out such inspections, measurements and tests on premises entered by that [inspector] or of articles or records found on any such premises, and take away such samples of water or of any land or articles, as that [inspector] considers appropriate for the purpose of enabling him to carry out any such investigation; or

[(c) at any reasonable time require—

(i) any water undertaker or licensed water supplier to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that undertaker or supplier by or under any of sections 68, 69 and 79 above; or

(ii) any relevant person (as defined in subsection (1A) of section 70 above)

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to supply him with copies of, or extracts from, the contents of any records kept for the purpose of complying with any duty or other requirement imposed on that person by or under that section].

(5) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by subsection (4) above.

(6) Any water undertaker[, licensed water supplier or other relevant person] which fails to comply with the duty imposed on it by virtue of subsection (3) above shall be guilty of an offence and liable [on summary conviction, or on conviction on indictment, to a fine].

[(7) Proceedings by the Secretary of State for an offence under this section or in relation to the quality and sufficiency of water supplied using a water undertaker's supply system may be instituted and carried on in the name of the Chief Inspector of Drinking Water.

(8) Any such proceedings by the Assembly may be instituted and carried on in the name of the Chief Inspector of Drinking Water for Wales, if there is one (or, if subsection (1B)(b) above applies, in the name of the Chief Inspector of Drinking Water).

(9) In this section "inspector" means the Chief Inspector of Drinking Water or any other person appointed under subsection (1) above.]

NOTES

Derivation

Sub-ss (1)–(4) derived from the Water Act 1989, s 60(1)–(4); sub-s (6) derived from the Water Act 1989, s 60(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words omitted repealed by the Water Act 2003, ss 57(1), (2), 101(2), Sch 9, Pt 3.
Date in force: 1 April 2004: see SI 2004/641, art 3(m), (z)(i); for transitional provisions see art 6, Sch 3, paras 5, 7 thereto.

Sub-s (1): in para (b) words "using a water undertaker's supply system" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 27(1), (2).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-ss (1A), (1B): inserted by the Water Act 2003, s 57(1), (3).
Date in force: 1 April 2004: see SI 2004/641, art 3(m); for transitional provisions see art 6, Sch 3, paras 5, 7 thereto.

Sub-s (2): words "An inspector" in square brackets substituted by the Water Act 2003, s 57(1), (4).
Date in force: 1 April 2004: see SI 2004/641, art 3(m); for transitional provisions see art 6, Sch 3, paras 5, 7 thereto.

Sub-s (2): in para (a)(i) words from "or a licensed" to "under that section" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 27(1), (3).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): words from ", licensed water supplier" to "section 70(1A) above)" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 27(1), (4).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): in paras (a), (b) words "an inspector" in square brackets substituted by the Water Act 2003, s 57(1), (5).
Date in force: 1 April 2004: see SI 2004/641, art 3(m); for transitional provisions see art 6, Sch 3, paras 5, 7 thereto.

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Sub-s (4): word “inspector” in square brackets in each place it occurs substituted by the Water Act 2003, s 57(1), (6).

Date in force: 1 April 2004: see SI 2004/641, art 3(m); for transitional provisions see art 6, Sch 3, paras 5, 7 thereto.

Sub-s (4): para (c) substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 27(1), (5).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (6): words “, licensed water supplier or other relevant person” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 27(1), (6).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (6): words from “on summary conviction, or on conviction on indictment, to a fine” in square brackets substituted by SI 2015/664, reg 4(1), Sch 4, Pt 1, para 23(1), (4).

Date in force: 12 March 2015: see SI 2015/664, reg 1(1); for transitional provision and savings see reg 5(1).

Sub-ss (7)–(9): inserted by the Water Act 2003, s 57(1), (8).

Date in force: 1 April 2004: see SI 2004/641, art 3(m); for transitional provisions see art 6, Sch 3, paras 5, 7 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under this section shall be exercisable by the National Assembly for Wales to the same extent as the powers, duties and other provisions to which this section applies are exercisable by the Assembly.

[86ZA Charging of fees]

[(1) The Secretary of State may by order made by statutory instrument confer power on the Chief Inspector of Drinking Water to charge fees for the exercise of a function by an inspector appointed by the Secretary of State under section 86 (and to determine their amount).

(2) The Welsh Ministers may by order made by statutory instrument confer power on the designated person to charge fees for the exercise of a function by an inspector appointed by the Welsh Ministers under section 86 (and to determine their amount).

(3) In subsection (2) “the designated person” means—

(a) the Chief Inspector of Drinking Water for Wales, or

(b) if the same person is designated under section 86(1A) and (1B), the Chief Inspector of Drinking Water in that person’s capacity as a person designated by the Welsh Ministers under section 86(1B).

(4) An order under this section may include consequential, supplementary, incidental or transitional provision, or savings.

(5) A statutory instrument containing an order made by the Secretary of State under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) A statutory instrument containing an order made by the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of the Assembly.

(7) Subsection (8) applies in relation to a statutory instrument containing both—

(a) an order under this section made by the Secretary of State, and

(b) an order under this section made by the Welsh Ministers.

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(8) If in accordance with subsection (5) or (6)—

(a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or

(b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,

nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.]

NOTES

Amendment

Inserted by the Water Act 2014, s 40(1).

Date in force: 14 July 2014: see SI 2014/1823, art 2(a).

[Complaints]

NOTES

Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 29.

[86A Procedure for dealing with complaints]

[(1) Each water undertaker shall establish a procedure for dealing with complaints made by its customers or potential customers in connection with the supply of water.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

(a) the water undertaker has consulted the [regional committee] to which it has been allocated; and

(b) the proposed procedure or modification has been approved by [the Authority].

(3) The water undertaker shall—

(a) publicise the procedure in such manner as may be approved by [the Authority]; and

(b) send a description of the procedure, free of charge, to any person who asks for one.

(4) [The Authority] may give a direction to a water undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.

(5) A direction under subsection (4) above—

(a) may specify the manner in which the review is to be conducted; and

(b) shall require a written report of the review to be made to [the Authority].

(6) Where [the Authority] receives a report under subsection (5)(b) above, [it] may, after consulting the water undertaker, direct the undertaker to make such modifications of—

(a) the procedure; or

(b) the manner in which the procedure operates,

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as may be specified in the direction.

(7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.

(8) The duty of a water undertaker to comply with subsection (1) above and with any direction given to it under subsection (4) or (6) above shall be enforceable by [the Authority] under section 18 above.

(9) Where [the Authority] is considering whether to exercise [its] powers under subsection (4) or (6) above in relation to a water undertaker, it shall be the duty of that undertaker to give [it] such information as [it] may reasonably require for the purpose of assisting [it] in coming to a decision.

(10) Section 202 below shall have effect, with the necessary modifications, in relation to information which [the Authority] requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 29.

Sub-s (2): in para (a) words "regional committee" in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (3).

Date in force: 1 October 2005: see SI 2005/2714, art 2(l)(v)(aa), (cc).

Sub-ss (2)–(6), (8)–(10): words "the Authority", "The Authority", "it" and "its" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Chapter IV
Fluoridation

87 Fluoridation of water supplies at request of health authorities [87 Fluoridation of water supplies at request of relevant authorities]

(1) Where a [*Strategic Health Authority or*] *[Health Authority] have applied in writing to a water undertaker for the water supplied within an area specified in the application to be fluoridated, that undertaker may, while the application remains in force, increase the fluoride content of the water supplied by the undertaker within that area.*

(2) For the purposes of subsection (1) above an application under this section shall remain in force until the [*Strategic Health Authority or*] *Health Authority, after giving reasonable notice to the water undertaker, withdraw it.*

(3) The area specified in an application under this section may be the whole, or any part of, the [area of the [*Strategic Health Authority or*] *Health Authority] making the application.*

(4) Where in exercise of the power conferred by this section, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine, that is to say—

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hexafluorosilicic acid (H2SiF6)

disodium hexafluorosilicate (Na2SiF6).

(5) Any [*Strategic Health Authority or*] *[Health Authority] making arrangements with a water undertaker in pursuance of an application under this section shall ensure that those arrangements include provisions designed to secure that the concentration of fluoride in the water supplied to consumers in the area in question is, so far as reasonably practicable, maintained at one milligram per litre.*

(6) Water to which fluoride has been added by a water undertaker in exercise of the power conferred by this section (with a view to its supply in any area) may be supplied by that or any other undertaker to consumers in any other area if the undertaker or undertakers concerned consider that it is necessary to do so—

(a) for the purpose of dealing with any serious deficiency in supply; or

(b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by any of the undertakers concerned.

(7) In subsection (6) above—

(a) the reference to water to which fluoride has been added by a water undertaker in exercise of the power conferred by this section includes a reference to water to which fluoride has been added by a water authority (within the meaning of the Water (Scotland) Act 1980) in exercise of the power conferred by section 1 of the Water (Fluoridation) Act 1985; and

(b) in relation to a supply of such water by a water undertaker, the reference to the water undertakers concerned shall have effect as references to the water undertaker and the water authority concerned.

(8) In this section "serious deficiency in supply" means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.

(9) In this section and the following provisions of this Chapter references to a [*Strategic Health Authority or*] *[Health Authority are references to any* [*Strategic Health Authority or*] *Health Authority established under section 8 of the National Health Service Act 1977].*

[(1) If requested in writing to do so by a relevant authority, a water undertaker shall enter into arrangements with the relevant authority to increase the fluoride content of the water supplied by that undertaker to premises within the area specified in the arrangements.

(2) But a water undertaker shall not be required by subsection (1) above to enter into any such arrangements until an indemnity with respect to the arrangements has been given by virtue of section 90 below—

(a) to the water undertaker; and

(b) to any licensed water supplier which is entitled to one.

(3) In this section and the following provisions of this Chapter—

(a) references to a relevant authority—

(i) in relation to areas in England, are to a Strategic Health Authority established under [*section 13 of the National Health Service Act 2006*]*;*

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[(i) in relation to areas in England, are to the Secretary of State;]

(ii) in relation to areas in Wales, are to the Assembly; and

(b) references to water supplied by a water undertaker are to water supplied (whether by a water undertaker or a licensed water supplier) to premises using the supply system of that undertaker.

[(3A) The Secretary of State may make a request under subsection (1) only if the Secretary of State is required to do so by section 88G(2) (following the making of a fluoridation proposal in accordance with section 88B).]

(4) The area specified in arrangements under this section may be—

[(a) in relation to England, such area as the Secretary of State considers appropriate for the purpose of complying with section 88G(2);]

(b) in relation to Wales, such area comprising the whole or any part of Wales as the Assembly may determine.

(5) The arrangements shall be on such terms as may be agreed between the relevant authority and the water undertaker or, in the absence of agreement, determined in accordance with section 87B below.

(6) Those terms shall include provision—

(a) requiring the relevant authority to meet the reasonable capital and operating costs incurred by the water undertaker in giving effect to the arrangements;

(b) specifying circumstances in which the requirement to increase the fluoride content may be temporarily suspended; and

(c) for the variation of the arrangements at the request of the relevant authority.

(7) The relevant authority shall consult the Authority in relation to the terms to be included in any arrangements under this section (in particular, terms which affect the operation of the water undertaker's supply system).

[(7A) The Secretary of State must, in relation to the terms to be included in any arrangements under this section, consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.

(7B) In this section and the following provisions of this Chapter "local authority" means—

(a) a county council in England;

(b) a district council in England, other than a council for a district in a county for which there is a county council;

(c) a London borough council;

(d) the Common Council of the City of London.]

(8) *If two or more relevant authorities request a particular water undertaker to enter into arrangements in respect of adjoining areas—*

(a) the authorities shall co-operate with each other so as to secure that the arrangements (taken together) are operable and efficient; and

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(b) if suitable terms are not agreed for all the arrangements, a combined reference may be made by the relevant authorities under section 87B below to enable the terms of each set of arrangements to be determined so that they are consistent.

(9) *If a relevant authority requests a water undertaker to vary arrangements, the authority shall co-operate with any relevant authority for an adjoining area which has entered into arrangements with the same water undertaker so as to secure that following the variation the arrangements (taken together) will be operable and efficient.*

(10) *If suitable terms are not agreed for a variation mentioned in subsection (9), a combined reference may be made by the relevant authorities under section 87B below to enable the terms of the variation to be determined so that (following the variation) both sets of arrangements are consistent.*

(11) Before carrying out the consultation required by subsection (1) of section 89 below in relation to a step mentioned in paragraph (a), (b) or (c) of subsection (2) of that section, *a relevant authority* [the Welsh Ministers] shall consult the water undertaker in question as to whether the arrangements which would result from taking that step would be operable and efficient (or, where it is proposed to terminate the arrangements, as to whether it would be reasonably practicable to do so).]

NOTES

Derivation

Sub-ss (1)–(5) derived from the Water (Fluoridation) Act 1985, s 1(1)–(5); sub-s (6) derived from the Water (Fluoridation) Act 1985, ss 1(6), 5(1), the Water Act 1989, Sch 25, para 73; sub-s (9) derived from the Water (Fluoridation) Act 1985, s 5(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, by new ss 87, 87A–87C, by the Water Act 2003, s 58(1), (2).

Date in force (in relation to England for certain purposes): 1 August 2008: see SI 2008/1922, art 2(a), (d).

Date in force (in relation to England for remaining purposes): 25 February 2009: see SI 2009/359, art 2(a), (f); for savings see art 3(1), Schedule thereto.

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Sub-s (1): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (2).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (1): words “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (2)(a).

Sub-s (2): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (2).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (3): words from “area of” to “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (2)(b).

Sub-s (3): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (2).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (5): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (2).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (5): words “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (2)(c).

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Sub-s (9): words “Strategic Health Authority or” in square brackets in both places they occur inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (2).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (9): words from “Health Authority are” to “National Health Service Act 1977” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (2)(d).

Sub-s (3) (as substituted by the Water Act 2003): para (a)(i) substituted by the Health and Social Care Act 2012, s 35(1), (2); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (3) (as substituted by the Water Act 2003): in para (a)(i) words “section 13 of the National Health Service Act 2006” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 137, 138.

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Sub-s (3A): inserted by the Health and Social Care Act 2012, s 35(1), (3); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (4) (as substituted by the Water Act 2003): para (a) substituted by the Health and Social Care Act 2012, s 35(1), (4); for transitional provisions see s 37 thereof.

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-ss (7A), (7B): inserted by the Health and Social Care Act 2012, s 35(1), (5); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-ss (8)–(10) (as substituted by the Water Act 2003): repealed by the Health and Social Care Act 2012, s 35(1), (7); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (11) (as substituted by the Water Act 2003): words “a relevant authority” in italics repealed and subsequent words in square brackets substituted by the Health and Social Care Act 2012, s 35(1), (8); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

[87A Target concentration of fluoride]

[(1) Arrangements under section 87(1) above shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.

(2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if the relevant authority considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).

(3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.

[(3A) If the Secretary of State proposes to—

(a) make arrangements which provide for the concentration in the specified area (or any part of

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it) to be lower than the general target concentration, or

(b) vary existing arrangements so that they so provide,

the Secretary of State shall consult any local authority whose area includes, coincides with or is wholly or partly within the specified area.]

(4) If, in relation to any area ("area A"), an order under section 88A(1) below specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this subsection, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of subsections (2) and (3) above).

(5) If the result of the operation of subsection (4) above in relation to arrangements in area A is that in an area adjoining area A ("area B") it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and subsection (4) above shall apply accordingly.

(6) An order under section 88A(1) below which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of subsection (4) or (5) above) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).

(7) In this section, "specified area" means the area specified in arrangements under section 87(1) above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with ss 87, 87B, 87C, for s 87 as originally enacted, by the Water Act 2003, s 58(1), (2).

Date in force (in relation to England for certain purposes): 1 August 2008: see SI 2008/1922, art 2(a), (d).

Date in force (in relation to England for remaining purposes): 25 February 2009: see SI 2009/359, art 2(a), (f).

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Sub-s (3A): inserted by the Health and Social Care Act 2012, s 35(1), (9); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

[87B Fluoridation arrangements: determination of terms]

[(1) This section applies if a relevant authority and a water undertaker fail to agree—

(a) the terms of arrangements requested by the relevant authority pursuant to subsection (1) of section 87 above; or

(b) a variation in the terms of those arrangements following a request by the relevant authority pursuant to subsection (6)(c) of that section.

(2) In relation to areas in England (except where subsection (4) below applies)—

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[(a) the Secretary of State may—

(i) determine the terms of the arrangements as the Secretary of State sees fit; or

(ii) refer the matter for determination by such other person as the Secretary of State considers appropriate; and]

(b) . . . and

(c) the determination of the Secretary of State or, as the case may be, the other person shall be final.

(3) In relation to areas in Wales (except where subsection (4) below applies)—

(a) the Assembly may—

(i) determine the terms of the arrangements itself as it sees fit; or

(ii) refer the matter for determination by such other person as it considers appropriate; and

(b) the determination of the Assembly or, as the case may be, the other person shall be final.

(4) *Where the Assembly is one of the relevant authorities which has made a combined reference under section 87(8)(b) or (10)* [Where a combined reference is made under section 87(7C)(b) or 87(7F)] above—

(a) the terms of the arrangements shall be determined by a person appointed by the Secretary of State and the Assembly acting jointly; and

(b) the determination of that person shall be final.

(5) Following determination under this section of the terms to be included in any arrangements—

(a) the relevant authority shall give notice of the determination to the water undertaker in question; and

(b) the undertaker shall be deemed to have entered into the arrangements under section 87(1) above on the terms determined under this section with effect from the day after the date of the notice.

(6) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements deemed to have been entered into under that section by virtue of subsection (5)(b) above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with ss 87, 87A, 87C, for s 87 as originally enacted, by the Water Act 2003, s 58(1), (2).

Date in force (in relation to England for certain purposes): 1 August 2008: see SI 2008/1922, art 2(a), (d).

Date in force (in relation to England for remaining purposes): 25 February 2009: see SI 2009/359, art 2(a), (f).

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Sub-s (2): para (a) substituted by the Health and Social Care Act 2012, s 35(1), (10)(a); for

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transitional provisions see s 37 thereof.

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (2): para (b) repealed by the Health and Social Care Act 2012, s 35(1), (10)(b); for transitional provisions see s 37 thereof.

Date in force: 1 April 2013: see SI 2013/160, art 2.

Sub-s (4): words from "Where the Assembly" to "section 87(8)(b) or (10)" in italics repealed and subsequent words in square brackets substituted by the Health and Social Care Act 2012, s 35(1), (11); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

[87C Fluoridation arrangements: compliance]

[(1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under section 87(1) above.

(2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—

hexafluorosilicic acid (H_2SiF_6)

disodium hexafluorosilicate (Na_2SiF_6).

(3) Subject to subsection (4) below, water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under section 87(1) above).

(4) Subsection (3) above applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—

(a) for the purpose of dealing with any serious deficiency in supply; or

(b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned, or by a licensed water supplier supplying water using its or their supply system.

(5) In this section—

(a) the reference, in subsection (3) above, to water to which fluoride has been added pursuant to arrangements includes a reference to water to which fluoride has been added by Scottish Water in exercise of the power conferred by section 1 of the Water (Fluoridation) Act 1985; and

(b) in relation to a supply of such water by a water undertaker, the reference, in subsection (4) above, to the water undertakers concerned shall have effect as references to the water undertaker and Scottish Water.

(6) In subsection (4) above, "serious deficiency in supply" means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.

(7) Arrangements entered into under section 87(1) above shall remain in force until the relevant authority, after giving reasonable notice to the water undertaker, terminates them.

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(8) *But (except where it is reasonably practicable to terminate the arrangements separately), arrangements to which section 87(8)(a) or (b) applied may only be terminated by the relevant authorities acting jointly.*]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with ss 87, 87A, 87B, for s 87 as originally enacted, by the Water Act 2003, s 58(1), (2).

Date in force (in relation to England for certain purposes): 1 August 2008: see SI 2008/1922, art 2(a), (d).

Date in force (in relation to England for remaining purposes): 25 February 2009: see SI 2009/359, art 2(a), (f).

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Sub-s (8): repealed by the Health and Social Care Act 2012, s 35(1), (12); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

88 Power to vary permitted fluoridation agents

(1) The Secretary of State may by order amend section *87(4)* [87C(2)] above by—

(a) adding a reference to another compound of fluorine; or

(b) removing any reference to a compound of fluorine.

(2) The power of the Secretary of State to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

Derivation

This section derived from the Water (Fluoridation) Act 1985, s 2.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): reference to "87(4)" in italics repealed and subsequent reference in square brackets substituted by the Water Act 2003, s 58(1), (3).

Date in force (in relation to England): 25 February 2009: see SI 2009/359, art 2(b), (f); for savings see art 3(1), Schedule thereto.

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

[88A Power to vary target concentration of fluoride]

[(1) The appropriate authority may by order made by statutory instrument provide that section 87A(1)

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above is to have effect as if for “one milligram per litre” there were substituted a lower concentration specified in the order.

(2) An order under subsection (1) above may make different provision for different geographical areas, or for some such areas and not others.

(3) A statutory instrument containing an order under subsection (1) above shall not be made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) In subsection (1) above “appropriate authority”—

(a) in relation to an area which is partly in England and partly in Wales, means the Secretary of State and the Assembly acting jointly;

(b) in relation to an area which is wholly in England, means the Secretary of State; and

(c) in relation to an area which is wholly in Wales, means the Assembly.

(5) An order amending or revoking an order under subsection (1) above made by virtue of subsection (4)(a) above must also be made by the Secretary of State and the Assembly acting jointly.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 58(1), (4).

Date in force (in relation to England): 25 February 2009: see SI 2009/359, art 2(b), (f).

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

[88B Requirement for fluoridation proposal: England]

[(1) The Secretary of State may not request a water undertaker to enter into arrangements under section 87(1) unless a fluoridation proposal is made to the Secretary of State.

(2) A fluoridation proposal is a proposal that the Secretary of State enter into arrangements with one or more water undertakers to increase the fluoride content of the water supplied by the undertaker or undertakers to premises within such area or areas in England as may be specified in the proposal.

(3) A fluoridation proposal may be made by one or more local authorities in England.

(4) A local authority may not make a fluoridation proposal unless its area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.

(5) In the following provisions of this Chapter, “proposer”, in relation to a fluoridation proposal, means the local authority or authorities which made the proposal.

(6) Any reference in the following provisions of this Chapter to a local authority affected by a fluoridation proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area, or at least one of the areas, specified in the proposal.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

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Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88C Initial consultation etc on fluoridation proposal]

[(1) This section applies if a fluoridation proposal is made.

(2) The proposer must consult the Secretary of State as to whether the arrangements which would result from implementing the proposal would be operable and efficient.

(3) The proposer must consult each water undertaker who supplies water to premises within the area or areas specified in the proposal as to whether the arrangements which would result from implementing the proposal, insofar as they might affect the undertaker, would be operable and efficient.

(4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.

(5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted under subsection (3).

(6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements would not be operable and efficient, no further steps may be taken in relation to the proposal.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88D Additional requirements where other local authorities affected]

[(1) This section applies where—

(a) a fluoridation proposal is made,

(b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,

(c) one or more local authorities other than the proposer are affected by the proposal, and

(d) the proposer wishes to take further steps in relation to the proposal.

(2) The proposer must notify any other local authority which is affected by the proposal.

(3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.

(4) The Secretary of State must by regulations—

(a) make provision as to the arrangements which must be made for the purposes of subsection (3), and

(b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.]

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NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88E Decision on fluoridation proposal]

[(1) This section applies where—

(a) a fluoridation proposal is made,

(b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient,

(c) in a case where section 88D applies, the conditions prescribed under subsection (4)(b) of that section are satisfied, and

(d) the proposer wishes to take further steps in relation to the proposal.

(2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.

(3) The proposer may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.

(4) But the proposal may not be modified so as to extend the boundary of any area to which it relates, or to add another area, except in circumstances prescribed in regulations by the Secretary of State.

(5) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to make such requests under section 87(1) as are necessary to implement the proposal.

(6) The Secretary of State may by regulations make provision—

(a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (5);

(b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (5).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88F Decision-making procedure: exercise of functions by committee]

[(1) This section applies in relation to the exercise of functions under or by virtue of section 88E(2) to (5) ("the fluoridation functions") except where the proposer is a single local authority and either—

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(a) no other local authorities are affected by the proposal, or

(b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the fluoridation functions.

(2) The local authorities affected by the proposal must—

(a) arrange for an existing joint committee of the authorities to exercise the fluoridation functions,

(b) establish a joint committee of the authorities for that purpose, or

(c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the fluoridation functions.

(3) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the fluoridation functions.

(4) The Secretary of State may by regulations make provision—

(a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;

(b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);

(c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (3);

(d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the fluoridation functions.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88G Secretary of State's duty in relation to fluoridation proposal]

[(1) This section applies if the Secretary of State is requested to make such requests under section 87(1) as are necessary to implement a fluoridation proposal.

(2) The Secretary of State must comply with the request if the Secretary of State is satisfied that the requirements imposed by sections 88B to 88F have been met in relation to the proposal.

(3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88C(2) or (3), 88D(4) or 88E(2).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

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Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88H Payments by local authorities towards fluoridation costs]

[(1) This section applies where a water undertaker enters into arrangements with the Secretary of State under section 87(1).

(2) The Secretary of State may require all local authorities affected by the arrangements to make payments to the Secretary of State to meet any costs incurred by the Secretary of State under the terms of the arrangements.

(3) The amount to be paid by each of the affected local authorities is to be determined—

(a) where a joint committee, or a joint sub-committee of Health and Wellbeing Boards, has exercised the fluoridation functions of the authorities in relation to the proposal which resulted in the arrangements being made and the committee or sub-committee continues to exist at the time when the Secretary of State exercises the power conferred by subsection (2), by that committee or sub-committee;

(b) in any other case, by agreement between the local authorities.

(4) If the amount to be paid by the affected local authorities is not determined as mentioned in subsection (3), the Secretary of State may—

(a) determine the amount to be paid, or

(b) refer the matter for determination by such other person as the Secretary of State considers appropriate.

(5) The amount determined in accordance with subsection (3) may, at the request of one or more of the affected local authorities, be varied with the agreement of all of them.

(6) If the affected local authorities fail to reach agreement for the purposes of subsection (5), the Secretary of State may—

(a) determine whether to vary the amount (and, if so, how), or

(b) refer the matter for determination by such other person as the Secretary of State considers appropriate.

(7) Any reference in this section to a local authority affected by arrangements under section 87(1) is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88I Variation or termination of arrangements under section 87(1)]

[(1) The Secretary of State may not request a water undertaker to vary arrangements entered into by the water undertaker under section 87(1) unless a proposal ("a variation proposal") is made to the

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Secretary of State for a variation in the arrangements.

(2) The Secretary of State may not give notice to a water undertaker under section 87C(7) to terminate arrangements entered into by the water undertaker under section 87(1) unless a proposal ("a termination proposal") is made to the Secretary of State for the termination of the arrangements.

(3) Subsection (1) does not apply in relation to a variation to provide for the concentration of fluoride in the area specified in the arrangements (or any part of it) to be lower than the general target concentration.

(4) The Secretary of State may by regulations provide that subsection (1) or (2) does not apply in prescribed circumstances.

(5) A variation or termination proposal may be made by one or more of the local authorities affected by the arrangements.

(6) The Secretary of State may by regulations provide that, where a termination proposal is made in relation to arrangements under section 87(1), no further termination proposal may be made in relation to the arrangements until the end of such period as may be specified in the regulations.

(7) In the following provisions of this Chapter, "proposer", in relation to a variation or termination proposal, means the local authority or authorities which made the proposal.

(8) Any reference in this section and in the following provisions of this Chapter to a local authority affected by a variation or termination proposal is a reference to a local authority whose area includes, coincides with or is wholly or partly within the area specified in the arrangements.

(9) In relation to a proposal for the variation of the area specified in arrangements under section 87(1), any reference in this section and in the following provisions of this Chapter to a local authority affected by the proposal also includes a reference to a local authority whose area would include, coincide with or be wholly or partly within the area specified in the arrangements if the variation were made.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88J Initial consultation etc on variation or termination proposal]

[(1) This section applies if a variation or termination proposal is made.

(2) In the case of a variation proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether the arrangements as varied in accordance with the proposal would be operable and efficient.

(3) In the case of a termination proposal, the proposer must consult the Secretary of State and the water undertaker who entered into the arrangements as to whether it would be reasonably practicable to terminate the arrangements.

(4) Each person consulted under subsection (2) or (3) must give the proposer its opinion on the matter mentioned in that subsection.

(5) The proposer must notify the Secretary of State of the opinion of each water undertaker consulted

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under subsection (2) or (3).

(6) If the Secretary of State informs the proposer that the Secretary of State is of the opinion that the arrangements as varied would not be operable and efficient or (as the case may be) that it would not be reasonably practicable to terminate the arrangements, no further steps may be taken in relation to the proposal.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88K Additional requirements where other local authorities affected]

[(1) This section applies where—

(a) a variation or termination proposal is made,

(b) the Secretary of State is of the opinion that the arrangements as varied would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,

(c) one or more local authorities other than the proposer are affected by the proposal, and

(d) the proposer wishes to take further steps in relation to the proposal.

(2) The proposer must notify any other local authority which is affected by the proposal.

(3) The proposer must make arrangements for enabling the authorities affected by the proposal to decide whether further steps should be taken in relation to the proposal.

(4) The duty in subsection (3) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.

(5) The Secretary of State may by regulations provide that the duty in subsection (3) does not apply in prescribed circumstances.

(6) The Secretary of State must by regulations—

(a) make provision as to the arrangements which must be made for the purposes of subsection (3), and

(b) prescribe conditions, with respect to the outcome of the arrangements, which must be satisfied before any further steps may be taken in relation to the proposal.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88L Decision on variation or termination proposal]

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[(1) This section applies where—

(a) a variation or termination proposal is made,

(b) the Secretary of State is of the opinion that the arrangements which would result from implementing the proposal would be operable and efficient or (as the case may be) that it would be reasonably practicable to terminate the arrangements,

(c) in a case where the duty in section 88K(3) applies, the conditions prescribed under subsection (6)(b) of that section are satisfied, and

(d) the proposer wishes to take further steps in relation to the proposal.

(2) The proposer must comply with such requirements as may be prescribed in regulations made by the Secretary of State as to the steps to be taken for the purposes of consulting and ascertaining opinion in relation to the proposal.

(3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.

(4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.

(5) The proposer of a variation proposal may (after any requirements imposed by regulations under subsection (2) have been complied with) modify the proposal.

(6) But, except in circumstances prescribed in regulations by the Secretary of State, the proposal may not be modified so as to propose the extension of the boundary of the area specified in the arrangements or, if the proposal is that the arrangements be varied so as to extend the boundary, may not be modified so as to propose a further extension of it.

(7) The proposer must (after any requirements imposed by regulations under subsection (2) have been complied with) decide whether to request the Secretary of State to request the water undertaker to vary the arrangements or (as the case may be) to give notice under section 87C(7) to the water undertaker to terminate the arrangements.

(8) The Secretary of State may by regulations may make provision—

(a) as to factors which the proposer must or may take into account in making the decision mentioned in subsection (7);

(b) as to the procedure to be followed by the proposer in exercising functions under or by virtue of subsection (2) or (7).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88M Decision-making procedure: exercise of functions by committee]

[(1) This section applies in relation to the exercise of functions under or by virtue of section 88L(2) to (7) ("the relevant functions") except where the proposer is a single local authority and either—

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(a) no other local authorities are affected by the proposal, or

(b) no other local authority which is affected by the proposal informs the proposer that it wishes to participate in the exercise of the functions.

(2) The local authorities affected by the proposal must—

(a) arrange for an existing joint committee of the authorities to exercise the relevant functions,

(b) establish a joint committee of the authorities for that purpose, or

(c) arrange for the Health and Wellbeing Boards established by them under section 194 of the Health and Social Care Act 2012 to exercise the relevant functions.

(3) The duty in subsection (2) does not apply in relation to the proposal if the Secretary of State so directs by an instrument in writing.

(4) The Secretary of State may by regulations provide that the duty in subsection (2) does not apply in prescribed circumstances.

(5) Where arrangements are made under subsection (2)(c) the Health and Wellbeing Boards in question must exercise the power conferred by section 198(b) of the Health and Social Care Act 2012 to establish a joint sub-committee of the Boards to exercise the relevant functions.

(6) The Secretary of State may by regulations make provision—

(a) for subsection (2)(a) to apply only in relation to a joint committee which meets prescribed conditions as to its membership;

(b) as to the membership of a joint committee established under subsection (2)(b) (including provision as to qualification and disqualification for membership and the holding and vacating of office as a member);

(c) as to the membership of a joint sub-committee of Health and Wellbeing Boards established in accordance with subsection (5);

(d) as to the procedure to be followed by any joint committee, or any joint sub-committee of Health and Wellbeing Boards, in exercising the relevant functions.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88N Secretary of State's duty in relation to requests for variation or termination]

[(1) This section applies if (following the making of a variation or termination proposal) the Secretary of State is requested—

(a) to request a variation of arrangements entered into under section 87(1), or

(b) (as the case may be) to give notice under section 87C(7) to a water undertaker to terminate such arrangements.

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(2) The Secretary of State must comply with the request if satisfied that the requirements imposed by sections 88I to 88M have been met in relation to the proposal.

(3) Subsection (2) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed under or by virtue of section 88J(2) or (3), 88K(6) or 88L(2).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

[88O Power to make regulations as to maintenance of section 87 arrangements]

[(1) The Secretary of State may by regulations prescribe circumstances in which arrangements must be made in accordance with the regulations—

(a) for consulting and ascertaining opinion on whether arrangements under section 87(1) ("section 87(1) arrangements") should be maintained, and

(b) for enabling authorities affected by section 87(1) arrangements to decide whether to propose to the Secretary of State that they be maintained.

(2) The regulations must make provision requiring the Secretary of State to give notice under section 87C(7) to a water undertaker to terminate section 87(1) arrangements entered into by the undertaker if—

(a) the outcome of arrangements made by virtue of subsection (1)(b) is that the affected authorities decide not to propose that the section 87(1) arrangements be maintained, and

(b) the Secretary of State is satisfied that any requirements imposed by regulations under subsection (1), as to the arrangements to be made for the purposes mentioned in that subsection, have been met.

(3) Subsection (2)(b) does not require the Secretary of State to consider the adequacy of any steps taken for the purposes of complying with any requirement to consult or to ascertain opinion which is imposed by regulations made under subsection (1).

(4) The provision that may be made by regulations under subsection (1) (as to the arrangements to be made for the purposes mentioned in that subsection) includes provision corresponding, or similar, to any requirements imposed by or under sections 88K to 88M.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Health and Social Care Act 2012, s 36; for transitional provisions see s 37 thereof.
Date in force: 1 April 2013: see SI 2013/160, art 2.

89 Publicity and consultation **[89 Consultation[: Wales]]**

(1) This section applies where a [*Strategic Health Authority or*] *[Health Authority] propose to make or withdraw an application under section 87 above.*

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(2) At least three months before implementing their proposal the [*Strategic Health Authority or*] *[Health Authority] shall—*

(a) publish details of the proposal in one or more newspapers circulating within the area affected by the proposal; and

(b) give notice of the proposal to every local authority whose area falls wholly or partly within that area.

(3) Before implementing the proposal the [*Strategic Health Authority or*] *[Health Authority] shall consult each of the local authorities to which they are required, by virtue of subsection (2)(b) above, to give notice of the proposal.*

(4) The [*Strategic Health Authority or*] *[Health Authority] shall, not earlier than seven days after publishing details of the proposal in the manner required by subsection (2)(a) above, republish them in that manner.*

(5) Where a [*Strategic Health Authority or*] *[Health Authority] have complied with this section in relation to the proposal they shall, in determining whether or not to proceed, have such regard as they consider appropriate—*

(a) to any representations which have been made to them with respect to it; and

(b) to any consultations under subsection (3) above.

(6) The Secretary of State may direct that this section shall not apply in relation to any proposal of a [*Strategic Health Authority or*] *[Health Authority] to withdraw an application under section 87 above.*

(7) Where, at any meeting of a [*Strategic Health Authority or*] *[Health Authority], consideration is given to the question whether the* [*Strategic Health Authority or*] *[Health Authority] should make or withdraw an application under section 87 above, section 1(2) of the Public Bodies (Admission to Meetings) Act 1960 (which allows the exclusion of the public in certain circumstances) shall not apply to any proceedings on that question.*

(8) In this section "local authority" includes a county council.

[(1) Before taking any step mentioned in subsection (2) below, *a relevant authority* [the Welsh Ministers] shall—

(a) consult and ascertain opinion in accordance with regulations made by *the appropriate authority* [the Welsh Ministers]; and

(b) comply with the requirements set out in regulations made by *the appropriate authority* [the Welsh Ministers].

(2) The steps are—

(a) requesting a water undertaker to enter into arrangements under section 87(1) above;

(b) requesting a water undertaker to vary any such arrangements in, or except in, prescribed circumstances or cases;

(c) giving notice to a water undertaker under section 87C(7) above to terminate any such arrangements;

(d) maintaining any such arrangements in prescribed circumstances.

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(3) Regulations—

(a) under paragraph (a) of subsection (1) above shall include provision about the process which *relevant authorities* [the Welsh Ministers] are to follow for the purposes of that paragraph;

(b) under paragraph (b) of that subsection shall include provision about the requirements which must be satisfied (with respect to the outcome of that process or otherwise) before a step mentioned in subsection (2) above may be taken.

(4) Subsection (1) above shall not apply in relation to a proposal by *a relevant authority* [the Welsh Ministers] to take the step mentioned in subsection (2)(c) above if *the appropriate authority so directs* [the Welsh Ministers so direct] by an instrument in writing (and such a direction may apply either generally or in relation to a particular proposal).

(5) *In this section "appropriate authority"—*

(a) in a case where two or more relevant authorities (one of which is the Assembly) propose to request a particular water undertaker to take a step mentioned in subsection (2)(a), (b) or (c) in respect of arrangements in adjoining areas, means the Secretary of State and the Assembly acting jointly;

(b) in relation to England (except in a case to which paragraph (a) applies), means the Secretary of State; and

(c) in relation to Wales (except in a case to which paragraph (a) applies), means the Assembly.]

NOTES

Derivation

Sub-s (1) derived from the Water (Fluoridation) Act 1985 ss 4(1), 5(1); sub-ss (2)–(7) derived from the Water (Fluoridation) Act 1985, s 4(2)–(7); sub-s (8) derived from the Water (Fluoridation) Act 1985, s 5(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Water Act 2003, s 58(1), (5).

Date in force (in relation to England in so far as relating to sub-ss (1), (2)(b), (d), (3), (5)(b) for the purpose of making regulations): 18 February 2005: see SI 2005/344, art 2.

Date in force (in relation to England for certain purposes): 1 August 2008: see SI 2008/1922, art 2(b)–(d).

Date in force (in relation to England for remaining purposes): 25 February 2009: see SI 2009/359, art 2(c).

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Section heading: word ": Wales" in square brackets inserted by the Health and Social Care Act 2012, s 35(1), (13)(a); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (1): words "Strategic Health Authority or" in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (3).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (1): words "Health Authority" in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (3)(a).

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Sub-s (2): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (3).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (2): words “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (3)(a).

Sub-s (3): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (3).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (3): words “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (3)(a).

Sub-s (4): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (3).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (4): words “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (3)(a).

Sub-s (5): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (3).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (5): words “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (3)(a).

Sub-s (6): words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (3).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (6): words “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (3)(a).

Sub-s (7): words “Strategic Health Authority or” in square brackets in both places they occur inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (3).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Sub-s (7): words “Health Authority” in square brackets in both places they occur substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (3).

Sub-s (1) (as substituted by the Water Act 2003): words “a relevant authority” in italics repealed and subsequent words in square brackets substituted by the Health and Social Care Act 2012, s 35(1), (13)(b); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (1) (as substituted by the Water Act 2003): in paras (a), (b) words “the appropriate authority” in italics repealed and subsequent words in square brackets substituted by the Health and Social Care Act 2012, s 35(1), (13)(c); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (3) (as substituted by the Water Act 2003): in para (a) words “relevant authorities” in italics repealed and subsequent words in square brackets substituted by the Health and Social Care Act 2012, s 35(1), (13)(d); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (4) (as substituted by the Water Act 2003): words “a relevant authority” in italics repealed and subsequent words in square brackets substituted by the Health and Social Care Act 2012, s 35(1), (13)(b); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (4) (as substituted by the Water Act 2003): words “the appropriate authority so directs” in italics repealed and subsequent words in square brackets substituted by the Health and Social

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Care Act 2012, s 35(1), (13)(e); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Sub-s (5) (as substituted by the Water Act 2003): repealed by the Health and Social Care Act 2012, s 35(1), (13)(f); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

90 Indemnities in respect of fluoridation **[90 Indemnities in respect of fluoridation]**

The Secretary of State may, with the consent of the Treasury, agree to indemnify any water undertaker in respect of such of any of the following as he thinks fit, that is to say—

(a) liabilities incurred by the undertaker in connection with anything done by the undertaker for the purpose of increasing the fluoride content of any water supplied by the undertaker;

(b) costs or expenses which are incurred by the undertaker, or for which the undertaker is liable, in connection with any proceedings which have been or may be brought by any person with respect to—

(i) things done for the purpose of increasing the fluoride content of any water; or

(ii) a proposal to increase the fluoride content of any water;

(c) expenditure incurred by the undertaker in complying with an order made in any such proceedings;

(d) liabilities transferred to the undertaker in accordance with a scheme under Schedule 2 to the Water Act 1989 or Schedule 2 to this Act which, in relation to the person from whom they were transferred, were liabilities falling within paragraph (a) above or liabilities in respect of costs, expenses or other expenditure mentioned in sub-paragraph (b) or (c) above.

[(1) The Secretary of State may, with the consent of the Treasury, agree to indemnify any water undertaker in respect of liabilities which it may incur in complying with arrangements entered into by it pursuant to section 87(1) above.

(2) The Secretary of State may also, with the consent of the Treasury, agree to indemnify any licensed water supplier in respect of liabilities which it may incur—

(a) in supplying water to which fluoride has been added by a water undertaker by virtue of any such arrangements;

(b) (if the licensee is introducing water into the water undertaker's supply system) in complying with any obligation imposed on it by the undertaker in consequence of the arrangements.

(3) The Secretary of State may by regulations make provision with respect to—

(a) the matters in respect of which an indemnity may be given under subsection (1) or (2) above;

(b) the form and terms of any such indemnity; and

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(c) such ancillary matters as he sees fit.]

NOTES

Derivation

This section derived from the Water Act 1989, s 172(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, by new ss 90, 90A, by the Water Act 2003, s 58(1), (6).

Date in force (in relation to England in so far as relating to sub-s (3)): 18 February 2005: see SI 2005/344, art 2.

Date in force (in relation to England for remaining purposes): 25 February 2009: see SI 2009/359, art 2(c), (f); for savings see art 3(1), Schedule thereto.

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Transfer of Functions

Functions of the Secretary of State and the Treasury, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Water Supply (Fluoridation Indemnities) (England) Regulations 2005, SI 2005/920 (made under sub-s (3)).

[90A Review of fluoridation]

[(1) A relevant authority which has entered into arrangements under section 87(1) above shall—

(a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and

(b) in accordance with subsections (3) to (5) below publish reports containing an analysis of those effects.

(2) The relevant authority shall make available—

(a) any information collected by it for the purposes of subsection (1) above; or

(b) summaries of that information.

(3) The relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which the arrangements come into force (unless section 91(1) below applies in relation to the arrangements).

(4) Where section 91(1) below applies in relation to the arrangements, the relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which section 58 of the Water Act 2003 came into force.

(5) The relevant authority shall publish a further report under subsection (1)(b) above within each period of four years beginning with the date on which their last such report was published.

[(5A) The relevant authority must, in exercising its functions under subsection (1)—

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(a) consult any local authority affected by the arrangements at such times as the relevant authority considers appropriate, and

(b) in particular, consult any such local authority before it publishes a report under paragraph (b) of that subsection.]

(6) This section ceases to apply in relation to any arrangements under section 87(1) above if those arrangements are terminated.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted, together with s 90, for s 90 as originally enacted, by the Water Act 2003, s 58(1), (6).

Date in force (in relation to England): 25 February 2009: see SI 2009/359, art 2(c), (f).

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Sub-s (5A): inserted by the Health and Social Care Act 2012, s 35(1), (14); for transitional provisions see s 37 thereof.

Date in force (in relation to England): 1 April 2013: see SI 2013/160, art 2.

Date in force (in relation to Wales): to be appointed: see the Health and Social Care Act 2012, s 306(2).

***91 Pre-1985 fluoridation schemes* [91 Pre-1985 fluoridation schemes]**

Schedule 7 to this Act shall have effect with respect to fluoridation schemes made before the coming into force of the Water (Fluoridation) Act 1985.

[(1) With effect from the appointed day, relevant pre-1985 arrangements shall be treated for the purposes of this Chapter as if they were arrangements entered into by the water undertaker in question with the relevant authority under section 87(1) above.

(2) The relevant authority may request such modifications to the arrangements as it considers necessary in order to give effect to subsection (1) above, for example to insert the terms mentioned in section 87(6) above.

(3) If the relevant authority and the water undertaker fail to agree the modifications requested by the authority—

(a) subsection (2), (3) or, as the case may be, (4) of section 87B above shall apply as if the parties had failed to agree the terms of arrangements requested under section 87(1) above; and

(b) following determination of the modifications—

(i) the relevant authority shall give notice of the determination to the water undertaker; and

(ii) the arrangements shall be deemed to have been modified as so determined with effect from the day after the date of the notice.

(4) Sections 87(11) and 89(1) above (which relate to consultation) shall not apply to the deemed entry into, and modification of, arrangements by virtue of this section.

(5) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements treated as entered into by a water undertaker by virtue of subsection (1) above.

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(6) In this section—

"the appointed day" means the day on which section 58 of the Water Act 2003 comes into force; and

"relevant pre-1985 arrangements" means arrangements in pursuance of which a scheme for increasing the fluoride content of water was being operated by a water undertaker by virtue of paragraph 1 of Schedule 7 to this Act immediately before the appointed day.]

NOTES

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Water Act 2003, s 58(1), (7).

Date in force (in relation to England): 26 March 2010: see SI 2010/975, art 2(a).

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

See Further

See further, in relation to the cessation of this section, in respect of arrangements which are treated as if they were arrangements entered into by a water undertaker with the Secretary of State under s 87(1) hereof: the Health and Social Care Act 2012, s 37(1), (4).

Chapter V
Supplemental Provisions of Part III

92 Power to give effect to international obligations

(1) Subject to subsection (2) below, the Secretary of State may by regulations provide that the provisions of Chapters I to III of this Part shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

(a) to any [EU] obligations; or

(b) to any international agreement to which the United Kingdom is for the time being a party.

(2) This section shall not authorise any modification of any of sections 71, 72 and 76 above or of any other provisions of this Part so far as they have effect for the purposes of or in relation to those sections.

NOTES

Derivation

This section derived from the Water Act 1989, s 171.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (a) reference to "EU" in square brackets substituted by SI 2011/1043, art 6(1)(e).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Transfer of Functions

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Transfer of functions to and from the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provided that, subject to art 2(b) to (f), all functions of a Minister of the Crown under this section were, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales. As a consequence of the amendment of Sch 1 to the 1999 Order by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e), the functions transferred to the Assembly by the 1999 Order ceased to be exercisable by the Assembly and instead (by virtue of art 5 of the 2000 Order) became exercisable by the Minister of the Crown by whom they were exercisable, in relation to Wales, immediately before 1 July 1999.

Subordinate Legislation

Surface Waters and Water Resources (Miscellaneous Revocations) Regulations 2015, SI 2015/524.

93 Interpretation of Part III

(1) In this Part—

"connection notice" shall be construed in accordance with section 45(8) above;

"consumer", in relation to a supply of water provided by a water undertaker to any premises, means (except in Chapter IV) a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;

"food production purposes" means the manufacturing, processing, preserving or marketing purposes with respect to food or drink for which water supplied to food production premises may be used, and for the purposes of this definition "food production premises" means premises used for the purposes of a business of preparing food or drink for consumption otherwise than on the premises;

"necessary works" includes works carried out, in exercise of any power conferred by or under any enactment, by a person other than a water undertaker;

"private supply" means, subject to subsection (2) below, a supply of water provided otherwise than by a water undertaker [or by a licensed water supplier in accordance with Chapter 1A of Part 2 of this Act] (including a supply provided for the purposes of the bottling of water), and cognate expressions shall be construed accordingly;

"private supply notice" shall be construed in accordance with section 80(7) above;

"water fittings" includes pipes (other than water mains), taps, cocks, valves, ferrules, meters, cisterns, baths, water closets, soil pans and other similar apparatus used in connection with the supply and use of water;

"wholesome" and cognate expressions shall be construed subject to the provisions of any regulations made under section 67 above.

(2) For the purposes of any reference in this Part to a private supply, or to supplying water by means of a private supply, water shall be treated as supplied to any premises not only where it is supplied from outside those premises, but also where it is abstracted, for the purpose of being used or consumed on those premises, from a source which is situated on the premises themselves; and for the purposes of this subsection water shall be treated as used on any premises where it is bottled on those premises for use or consumption elsewhere.

(3) For the purposes of this Part a service pipe shall be treated as connected with a water main other than a trunk main even if the connection is an indirect connection made by virtue of a connection with another service pipe.

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(4) The rights conferred by virtue of this Part as against the owner or occupier of any premises shall be without prejudice to any rights and obligations, as between themselves, of the owner and occupier of the premises.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, ss 66(1), (1A), 164(3), the Food Safety Act 1990, s 55(5), (6); sub-ss (2)–(4) derived from the Water Act 1989, s 66(2)–(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in definition "private supply" words from "or by a" to "of this Act" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 28.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

[Part IIIA
Promotion of the Efficient Use of Water]

NOTES

Amendment

Inserted by the Environment Act 1995, s 120, Sch 22, para 102.

[93A Duty to promote the efficient use of water]

[(1) It shall be the duty of every water undertaker [or licensed water supplier] to promote the efficient use of water by its customers.

(2) The duty of a water undertaker [or licensed water supplier] 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 Authority].

(3) Nothing in this Part shall have effect to authorise or require a water undertaker [or licensed water supplier] to impose any requirement on any of its customers or potential customers.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Environment Act 1995, s 120, Sch 22, para 102.

Sub-s (1): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 29(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 29(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): in para (b) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

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Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 29(c).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[93B Power of [Authority] to impose requirements on water undertakers]

[(1) [The Authority] may require a water undertaker [or licensed water supplier], in its performance of its duty under section 93A above, to—

(a) take any such action; or

(b) achieve any such overall standards of performance,

as [it] may specify in the document imposing the requirement.

(2) Where [the Authority], in the document imposing a requirement on a water undertaker [or licensed water supplier] under subsection (1) above, stipulates that any contravention of the requirement by the undertaker [or supplier] will be a breach of its duty under section 93A above, any contravention of that requirement by the undertaker [or supplier] shall be a breach of that duty.

(3) Without prejudice to the generality of subsection (1) above, a requirement under that subsection may—

(a) require a water undertaker [or licensed water supplier] to make available to its customers or potential customers such facilities as may be specified in the document imposing the requirement;

(b) require a water undertaker [or licensed water supplier] to provide or make available to its customers or potential customers such information as may be specified in the document imposing the requirement, and may specify the form in which, the times at which or the frequency with which any such information is to be provided or made available.

(4) In exercising his powers under this section in relation to any water undertaker [or licensed water supplier] [the Authority] shall have regard to the extent to which water resources are available to that undertaker [or supplier].

(5) Before imposing any requirement on a water undertaker [or licensed water supplier] under subsection (1) above [the Authority] shall consult that undertaker [or supplier].

(6) Nothing in this section authorises [the Authority] to impose any requirement on a water undertaker [or licensed water supplier] which has or may have the effect of authorising or requiring that undertaker [or supplier] to impose any requirement on any of its customers or potential customers.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Inserted by the Environment Act 1995, s 120, Sch 22, para 102.

Section heading: word "Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (1), (2), (4)–(6): words "The Authority", "the Authority" and "it" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (3)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): words "or supplier" in square brackets in both places they occur inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (3)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): in paras (a), (b) words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (4): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (5)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (4): words "or supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (5)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (5): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (6)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (5): words "or supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (6)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (6): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (7)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (6): words "or supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 30(1), (7)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

[93C Publicity of requirements imposed under section 93B]

[(1) Where, under section 93B(1) above, [the Authority] imposes any requirement on a water undertaker [or licensed water supplier], [the Authority] may arrange for that requirement to be publicised in any such manner as [it] may consider appropriate for the purpose of bringing it to the attention of that undertaker's [or supplier's] customers.

(2) Without prejudice to the generality of subsection (1) above, the Director may arrange for such publicising of the requirement as is mentioned in that subsection by—

(a) himself publicising the requirement or causing it to be publicised; or

(b) directing the undertaker [or supplier] to inform or arrange to inform its customers of the requirement.]

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NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Environment Act 1995, s 120, Sch 22, para 102.

Sub-s (1): words "the Authority" and "it" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 31(1), (2)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): words "or supplier's" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 31(1), (2)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): in para (b) words "or supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 31(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

[93D Information as to compliance with requirements under section 93B]

[(1) Where a water undertaker [or licensed water supplier] is subject to any requirement imposed under section 93B(1) above, [the Authority] may arrange for there to be given to the customers of that undertaker [or supplier] at any such times or with such frequency, and in any such manner, as [it] may consider appropriate, such information about the level of performance achieved by the undertaker [or supplier] in relation to that requirement as appears to [the Authority] to be expedient to be given to those customers.

(2) Without prejudice to the generality of subsection (1) above, [the Authority] may arrange for such giving of information as is mentioned in that subsection by—

(a) [itself] disseminating the information or causing it to be disseminated; or

(b) directing the undertaker [or supplier] to give or arrange to give the information to its customers.

(3) At such times and in such form or manner as [the Authority] may direct, a water undertaker [or licensed water supplier] shall provide [the Authority] with such information as may be specified in the direction in connection with the undertaker's [or supplier's] performance in relation to any requirement imposed upon the undertaker [or supplier] under section 93B(1) above.

(4) A water undertaker [or licensed water supplier] who fails without reasonable excuse to do anything required of him by virtue of subsection (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Environment Act 1995, s 120, Sch 22, para 102.

Sub-s (1): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 32(1), (2)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-ss (1)–(3): words "the Authority", "it" and "itself" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

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Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words “or supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 32(1), (2)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): words “or supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 32(1), (2)(c).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): in para (b) words “or supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 32(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): words “or licensed water supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 32(1), (4)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): words “or supplier’s” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 32(1), (4)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (3): words “or supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 32(1), (4)(c).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (4): words “or licensed water supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 32(1), (5).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Part IV
Sewerage Services

Chapter I
General Functions of Sewerage Undertakers

Principal duties and standards of performance

94 General duty to provide sewerage system

(1) It shall be the duty of every sewerage undertaker—

(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers [and any lateral drains which belong to or vest in the undertaker] as to ensure that that area is and continues to be effectually drained; and

(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—

(a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and

(b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 18 above—

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(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 Authority].

(4) The obligations imposed on a sewerage 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 95 below and shall not be in any way qualified by any such provision.

(5) In this section "trade effluent" has the same meaning as in Chapter III of this Part.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, s 67(1), (2); sub-s (3) derived from the Water Act 1989, s 67(4), sub-s (4) derived from the Water Act 1989, s 68(6); sub-s (5) derived from the Water Act 1989, s 67(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (a) words "and any lateral drains which belong to or vest in the undertaker" in square brackets inserted by the Water Act 2003, s 97(1), (3).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): in para (b) words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the duty imposed on sewerage undertakers: the Urban Waste Water Treatment (England and Wales) Regulations 1994, SI 1994/2841, reg 4.

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 10(2).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

95 Standards of performance in connection with provision of sewerage services

(1) For the purpose—

(a) of facilitating the determination of the extent to which breaches of the obligations imposed by virtue of the following provisions of this Part are to amount to breaches of the duty imposed by section 94 above; or

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(b) of supplementing that duty by establishing overall standards of performance in relation to the provision of sewerage services by any sewerage undertaker,

the Secretary of State may, in accordance with section 96 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 96 below, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in his opinion, ought to be achieved in individual cases.

(3) Regulations under subsection (2) above may provide that, if a sewerage 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 sewerage 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 Authority];

(c) make provision for the procedure to be followed in connection with any such reference and for [the Authority's] determination on such a reference to be enforceable in such manner as may be prescribed;

(d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations.

[(5) Where [the Authority] determines any dispute in accordance with regulations under this section [it] shall, in such manner as may be specified in the regulations, give [its] reasons for reaching [its] decision with respect to the dispute.]

NOTES

Derivation

Sub-ss (1), (4) derived from the Water Act 1989, s 68(1), (3); sub-ss (2), (3) derived from the Water Act 1989, s 68(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (4), (5): words "the Authority", "it" and "its" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): inserted by the Competition and Service (Utilities) Act 1992, s 56(6), Sch 1, para 24.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this

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section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, SI 2008/594 (made under sub-ss (2)–(4)).

[95A Information with respect to levels of performance]

[(1) [The Authority] shall from time to time collect information with respect to—

(a) the compensation paid by sewerage undertakers under regulations under section 95(2) above; and

(b) the levels of overall performance achieved by sewerage undertakers in connection with the provision of sewerage services.

(2) At such times as [the Authority] may direct, each sewerage undertaker shall give the following information to [the Authority]—

(a) as respects each standard prescribed by regulations under section 95(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 95(1)(b) above, such information with respect to the level of performance achieved by the undertaker as may be so specified.

(3) A sewerage undertaker who without reasonable excuse fails to do anything required of him by subsection (2) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

(4) [The Authority] shall, at least once in every year, arrange for the publication, in such form and in such manner as [it] considers appropriate, of such of the information collected by or given to [it] under this section as it may appear to [it] expedient to give to customers or potential customers of sewerage undertakers.

(5) In arranging for the publication of any such information [the Authority] 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 Authority], 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 Authority], seriously and prejudicially affect the interests of that body.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 31.

Sub-ss (1), (2), (4), (5): words “The Authority”, “the Authority” and “it” in square brackets in each

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place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): substituted by the Water Act 2014, s 30(2), (5).

Date in force (for certain purposes): 1 January 2015: see SI 2014/3320, art 2(2)(b).

Date in force (for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

[95B 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 sewerage undertakers and the handling of such complaints.

(2) In subsection (1) above, "complaints" includes complaints made directly to sewerage undertakers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 45(2).

Date in force: 1 October 2005: see SI 2005/2714, art 2(e); for transitional provisions see art 5(1), Schedule, para 8 thereto.

96 Procedure for regulations under section 95

[(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.]

(1) [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) the Secretary of State is satisfied that a copy of the application has been served by [the Authority]—

(i) on every sewerage undertaker specified in the application; . . .

(ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;

[(iii) on the Council; and

(iv) on such other persons or bodies as the Secretary of State may consider appropriate;]]

(c) such period as the Secretary of State considers appropriate has been allowed for the making—

(i) by [the Authority]; and

(ii) by any affected sewerage undertaker [or person or body on whom a copy of the application has been served under paragraph [(b)] above],

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of representations or objections with respect to [the Authority's] proposals and any modifications proposed by the Secretary of State; and

(d) the Secretary of State has considered [the summary mentioned in subsection (2)(bb) below,] [the Authority's] reasons for [its] 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.

[(1A) Before making an application to the Secretary of State under this section [the Authority] shall arrange for such research as [it] 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 Authority] to the Secretary of State complies with this subsection if it—

(a) sets out [the Authority's proposals for the making of] regulations under section 95 above;

(b) specifies the sewerage undertaker or undertakers in relation to which it is proposed [the regulations] should apply;

[(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 Authority's] reasons for [its] proposals.

(3) The Secretary of State shall not make any regulations [on an application by the Authority under this section] except where—

(a) the only provisions of the regulations are [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 Authority's] proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—

(i) to [the Authority]; . . .

(ii) to any sewerage undertaker appearing to the Secretary of State to be likely to be affected by the modifications[; and

(iii) to any person or body on whom a copy of the Authority's application was served under subsection (1)(b) above].

[(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—

(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;

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(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.]

NOTES

Derivation

This section derived from the Water Act 1989, s 68(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (A1): inserted by the Water Act 2003, s 42(1), (2).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): words from "Where the Authority" to "section 95 above if—" in square brackets substituted by the Water Act 2003, s 42(1), (3)(a).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): para (b) substituted by the Competition and Service (Utilities) Act 1992, ss 30(1), (2), 56(6), Sch 1, para 25.

Sub-ss (1), (1A), (2), (3): words "the Authority", "the Authority's", "its" and "it" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): in para (b)(i) word omitted repealed by the Water Act 2003, ss 42(1), (3)(b), 101(2), Sch 9, Pt 2.

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Date in force: 1 April 2005: see SI 2005/968, art 2(h), (n)(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): para (b)(iii), (iv) inserted by the Water Act 2003, s 42(1), (3)(b).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): in para (c)(ii) words from "or person or body" to "above" in square brackets inserted by the Competition and Service (Utilities) Act 1992, ss 30(1), (2), 56(6), Sch 1, para 25.

Sub-s (1): in para (c)(ii) reference to "(b)" in square brackets substituted by the Water Act 2003, s 42(1), (3)(c).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (1): in para (d) words "the summary mentioned in subsection (2)(bb) below," in square brackets substituted by the Competition and Service (Utilities) Act 1992, ss 30(1), (2), 56(6), Sch 1, para 25.

Sub-s (1A): inserted by the Competition and Service (Utilities) Act 1992, s 30(1), (3).

Sub-s (2): in para (a) words "the Authority's proposals for the making of" in square brackets substituted by the Water Act 2003, s 42(1), (4)(a).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (2): in para (b) words "the regulations" in square brackets substituted by the Water Act 2003, s 42(1), (4)(b).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (2): para (bb) inserted by the Competition and Service (Utilities) Act 1992, s 30(1), (4).

Sub-s (3): words "on an application by the Authority under this section" in square brackets substituted by the Water Act 2003, s 42(1), (5)(a).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (3): in para (a) words from "those which in" to "to those proposals" in square brackets substituted by the Water Act 2003, s 42(1), (5)(b).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (3): in para (b)(i) word omitted repealed by the Water Act 2003, ss 42(1), (5)(c), 101(2), Sch 9, Pt 2.

Date in force: 1 April 2005: see SI 2005/968, art 2(h), (n)(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-s (3): para (b)(iii) and word "; and" immediately preceding it inserted by the Water Act 2003, s 42(1), (5)(c).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Sub-ss (4)–(8): inserted by the Water Act 2003, s 42(1), (6).

Date in force: 1 April 2005: see SI 2005/968, art 2(h); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[96A Information to be given to customers about overall performance]

[(1) Each sewerage undertaker shall, in such form and manner and with such frequency as [the Authority] may direct, take steps to inform its customers of—

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(a) the standards of overall performance established under section 95(1)(b) above which are applicable to that undertaker; and

(b) that undertaker's level of performance as respects each of those standards.

(2) In giving any such direction, [the Authority] shall not specify a frequency of less than once in every period of twelve months.

(3) The duty of a sewerage undertaker to comply with this section shall be enforceable by [the Authority] under section 18 above.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 32.

Sub-ss (1)–(3): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Performance of sewerage undertaker's functions by local authorities etc

97 Performance of sewerage undertaker's functions by local authorities etc

(1) A relevant authority may, in accordance with any arrangements which it has entered into for the purpose with any sewerage undertaker, carry out sewerage functions on that undertaker's behalf in relation to such area comprising the whole or any part of that authority's relevant area, together (where that authority are a local authority or an urban development corporation and the arrangements so provide) with parts of any adjacent relevant areas of other relevant authorities, as may be specified in the arrangements.

(2) Arrangements entered into for the purposes of this section may contain any such provision as may be agreed between the relevant authority and the sewerage undertaker but shall not affect the availability to any person, other than the relevant authority, of any remedy against the undertaker in respect of the carrying out of the undertaker's sewerage functions or of any failure to carry them out.

(3) It is hereby declared that, if arrangements entered into for the purposes of this section so provide, a relevant authority shall be entitled to exercise on behalf of a sewerage undertaker any power which by or under any enactment is exercisable by the undertaker for the purposes of, or in connection with, the carrying out of the undertaker's sewerage functions.

(4) Where arrangements entered into for the purposes of this section provide for a local authority to carry out the sewerage functions of a sewerage undertaker on the undertaker's behalf, section 101 of the Local Government Act 1972 (delegation of functions), so far as it relates to the carrying out of functions by a committee, sub-committee or officer of a local authority, shall have effect in relation to those sewerage functions only in so far as the arrangements do not otherwise provide.

[(4A) Where arrangements entered into for the purposes of this section provide for a local authority which are operating executive arrangements to carry out the sewerage functions of a sewerage undertaker on that undertaker's behalf—

(a) those sewerage functions shall be treated as functions of the authority for the purposes of section 13 of the Local Government Act 2000; and

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(b) if or to the extent that those sewerage functions are the responsibility of the executive of that authority—

(i) subsection (4) above shall not apply; and

(ii) sections 14 to 16 of the Local Government Act 2000 and any regulations made under sections 17 to 20 of that Act shall apply in relation to those sewerage functions only in so far as the arrangements do not provide otherwise.]

(5) In this section—

["executive" and "executive arrangements" have the same meaning as in Part II of the Local Government Act 2000;]

"new town" has the same meaning as in the New Towns Act 1981;

"relevant area"—

(a) in relation to a local authority, means the area of the authority and the whole of any new town or urban development area any part of which is situated within the area of the authority;

[(aa) "in relation to the Mayoral development corporation for any Mayoral development area, means that area;]

[(b) in relation to the English new towns residuary body, means any new town in England;

(ba) in relation to the Welsh new towns residuary body, means any new town in Wales;]

(c) in relation to the development corporation for any new town, means that new town; [and]

(d) . . .

(e) in relation to any urban development corporation for any urban development area, means that area;

"relevant authority" means any of the following, that is to say—

(a) a local authority;

(b) the [new towns residuary body] [or a development corporation for a new town];

(c) the urban development corporation for any urban development area;

"sewerage functions", in relation to a sewerage undertaker, means any of the functions of the undertaker by virtue of its appointment under Chapter I of Part II of this Act as a sewerage undertaker, other than its functions relating to sewage disposal and its functions by virtue of Chapter III of this Part;

"urban development area" means any area so designated under Part XVI of the Local Government, Planning and Land Act 1980.

(6) . . .

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NOTES

Derivation

Sub-ss (1)–(5) derived from the Water Act 1989, s 73; sub-s (6) derived from the Water Act 1989, Sch 25, para 3.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (4A): inserted in relation to England by SI 2001/2237, arts 1(2), 2(m), 27(a), and in relation to Wales by SI 2002/808, arts 2(l), 26(a).

Date in force (in relation to England): 11 July 2001: see SI 2001/2237, art 1(1).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/808, art 1(1).

Sub-s (5): definition "executive" and "executive arrangements" inserted in relation to England by SI 2001/2237, arts 1(2), 2(m), 27(b), and in relation to Wales by SI 2002/808, arts 2(l), 26(b).

Date in force (in relation to England): 11 July 2001: see SI 2001/2237, art 1(1).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/808, art 1(1).

Sub-s (5): in definition "relevant area" para (aa) inserted by the Localism Act 2011, s 222, Sch 22, paras 39, 41(a).

Date in force: 15 January 2012: see the Localism Act 2011, s 240(1)(l).

Sub-s (5): in definition "relevant area" paras (b), (ba) substituted, for para (b) as originally enacted, by the Housing and Regeneration Act 2008, s 56, Sch 8, paras 55, 57(a).

Date in force: 1 December 2008: see SI 2008/3068, arts 1(2), 2(1)(w), (3); for transitional provisions and savings see arts 6–13 thereof.

Sub-s (5): in definition "relevant area" in para (c) word "and" in square brackets inserted by the Government of Wales Act 1998, s 129, Sch 15, para 17(a).

Date in force: 1 October 1998: see SI 1998/2244, art 4.

Sub-s (5): in definition "relevant area" para (d) repealed by the Government of Wales Act 1998, s 152, Sch 18, Pt IV.

Date in force: 1 October 1998: see SI 1998/2244, art 4.

Sub-s (5): in definition "relevant authority" in para (b) words "new towns residuary body" in square brackets substituted by the Housing and Regeneration Act 2008, s 56, Sch 8, paras 55, 57(b).

Date in force: 1 December 2008: see SI 2008/3068, arts 1(2), 2(1)(w), (3); for transitional provisions and savings see arts 6–13 thereof.

Sub-s (5): in definition "relevant authority" in para (b) words "or a development corporation for a new town" in square brackets substituted by the Government of Wales Act 1998, s 129, Sch 15, para 17(b).

Date in force: 1 October 1998: see SI 1998/2244, art 4.

Sub-s (6): repealed by the Statute Law (Repeals) Act 1998.

Date in force: 19 November 1998: (no specific commencement provision).

Chapter II
Provision of Sewerage Services

Requisition of public sewer

98 Duty to comply with sewer requisition

(1) It shall be the duty of a sewerage undertaker (in accordance with section 101 below) to provide a public sewer to be used for the drainage for domestic purposes of premises in a particular locality in its area if—

(a) the undertaker is required to provide the sewer by a notice served on the undertaker by one

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or more of the persons who under subsection (2) below are entitled to require the provision of the sewer for that locality;

(b) the premises in that locality the drainage of which would be by means of that sewer are—

(i) premises on which there are buildings; or

(ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out;

and

(c) the conditions specified in section 99 below are satisfied in relation to that requirement.

[(1A) It shall be the duty of a sewerage undertaker (in accordance with section 101 below) to provide a lateral drain to communicate with a public sewer and to be used for the drainage for domestic purposes of premises in its area if—

(a) the undertaker is required to provide the lateral drain by a notice served on the undertaker by one or more of the persons who under subsection (2A) below are entitled to require the provision of the lateral drain;

(b) the premises the drainage of which would be by means of that lateral drain are—

(i) premises on which there are buildings; or

(ii) premises on which there will be buildings when proposals made by any person for the erection of any buildings are carried out; and

(c) the conditions specified in section 99 below are satisfied in relation to that requirement.]

(2) Each of the following persons shall be entitled to require the provision of a public sewer for any locality, that is to say—

(a) the owner of any premises in that locality;

(b) the occupier of any premises in that locality;

(c) any local authority within whose area the whole or any part of that locality is situated;

[(ca) where the whole or any part of that locality is situated within a Mayoral development area, the Mayoral development corporation;]

(d) where the whole or any part of that locality is situated in a new town, within the meaning of the New Towns Act 1981—

(i) the [new towns residuary body]; and

(ii) . . . the development corporation for the new town. . .;

and

(e) where the whole or any part of that locality is situated within an area designated as an urban development area under Part XVI of the Local Government, Planning and Land Act 1980, the urban development corporation.

[(2A) Each of the following persons shall be entitled to require the provision of a lateral drain, that is to say—

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(a) the owner of the premises the drainage of which would be by means of that lateral drain;

(b) the occupier of those premises;

(c) any local authority within whose area those premises are situated;

(d) where those premises are situated in a new town, within the meaning of the New Towns Act 1981—

(i) the [new towns residuary body]; and

(ii) the development corporation for the new town; and

(e) where those premises are situated within an area designated as an urban development area under Part 16 of the Local Government, Planning and Land Act 1980, the urban development corporation.]

(3) The duty of a sewerage undertaker under this section to provide a public sewer [or, as the case may be, a lateral drain] shall be owed to the person who requires the provision of the sewer [or lateral drain] or, as the case may be, to each of the persons who joins in doing so.

(4) Where a duty is owed by virtue of subsection (3) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a [sewerage] undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(5) In this section the reference to domestic purposes, in relation to the drainage of premises . . . to which a requirement under this section relates, is a reference—

(a) where there are buildings on [those premises], to such domestic sewerage purposes as are specified in relation to those buildings in the requirement; and

(b) where any person is proposing to erect buildings on [those premises], to such domestic sewerage purposes as are so specified in relation to the buildings and to times after the erection of the buildings.

NOTES

Derivation

Sub-ss (1)–(4) derived from the Water Act 1989, s 71(1), (3), (7), (8); sub-s (5) derived from the Water Act 1989, s 71(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1A): inserted by the Water Act 2003, s 95(1), (2).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.
Sub-s (2): para (ca) inserted by the Localism Act 2011, s 222, Sch 22, paras 39, 42.
Date in force: 15 January 2012: see the Localism Act 2011, s 240(1)(l).
Sub-s (2): in para (d)(i) words “new towns residuary body” in square brackets substituted by the Housing and Regeneration Act 2008, s 56, Sch 8, paras 55, 58(a).
Date in force: 1 December 2008: see SI 2008/3068, arts 1(2), 2(1)(w), (3); for transitional

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provisions and savings see arts 6–13 thereof.

Sub-s (2): in para (d)(ii) words omitted repealed by the Government of Wales Act 1998, s 152, Sch 18, Pt IV.

Date in force: 1 October 1998: see SI 1998/2244, art 4.

Sub-s (2A): inserted by the Water Act 2003, s 95(1), (3).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2A): in para (d)(i) words "new towns residuary body" in square brackets substituted by the Housing and Regeneration Act 2008, s 56, Sch 8, paras 55, 58(b).

Date in force: 1 December 2008: see SI 2008/3068, arts 1(2), 2(1)(w), (3); for transitional provisions and savings see arts 6–13 thereof.

Sub-s (3): words "or, as the case may be, a lateral drain" in square brackets inserted by the Water Act 2003, s 95(1), (4)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): words "or lateral drain" in square brackets inserted by the Water Act 2003, s 95(1), (4)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): word in square brackets substituted by the Competition and Service (Utilities) Act 1992, s 56(6), Sch 1, para 26.

Sub-s (5): words omitted repealed by the Water Act 2003, ss 95(1), (5)(a), 101(2), Sch 9, Pt 3.

Date in force: 28 May 2004: see SI 2004/641, art 4(b), (d)(i); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): in para (a) words "those premises" in square brackets substituted by the Water Act 2003, s 95(1), (5)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): in para (b) words "those premises" in square brackets substituted by the Water Act 2003, s 95(1), (5)(c).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

99 Financial conditions of compliance

(1) The conditions mentioned in section 98(1)(c) [or 98(1A)(c)] above are satisfied in relation to a requirement for the provision of a public sewer [or (as the case may be) lateral drain] by a sewerage undertaker if—

(a) such undertakings as the undertaker may have reasonably required in accordance with subsection (2) [or, as the case may be, subsection (2A)] below have been given by the person or persons who have required the provision of the sewer [or (as the case may be) lateral drain]; and

(b) such security as the undertaker may have reasonably required has been provided for the discharge of any obligations imposed by those undertakings on any person who, under subsection (3) below, may be required to secure his undertakings.

(2) The undertakings which a sewerage undertaker may require for the purposes of subsection (1) above in respect of any public sewer are undertakings which—

[(a) bind the person or persons mentioned in that subsection to pay to the undertaker either (at the election of such person or persons)—

(i) in respect of each of the twelve years following the provision of the sewer, an amount not exceeding the relevant deficit (if any) for that year on that

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sewer; or

(ii) following provision of the sewer, a single amount not exceeding the discounted aggregate deficit on that sewer; and]

(b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability to pay apportioned in such manner as they may agree.

[(2A) The undertakings which a sewerage undertaker may require for the purposes of subsection (1) above in respect of any lateral drain are undertakings which—

(a) bind the person or persons mentioned in that subsection to pay to the undertaker, following provision of the lateral drain, on such terms as may be specified in the undertaking, an amount not exceeding the costs reasonably incurred in or in connection with the provision of the lateral drain; and

(b) in the case of undertakings binding two or more persons, bind them either jointly and severally or with liability apportioned in such manner as they may agree.]

[(3) For the purposes of subsection (1)(b) above a person may be required to secure his undertakings in relation to the provision of a public sewer or, as the case may be, a lateral drain if—

(a) it was by virtue of section 98(2)(a) or (b) or (as the case may be) section 98(2A)(a) or (b) above that he required, or joined in requiring, the provision of the sewer or drain; and

(b) he is not a public authority.]

(4) Where for the purposes of subsection (1)(b) above any sums have been deposited with a sewerage undertaker by way of security for the discharge of any obligation, the undertaker shall pay interest at such rate as may be determined either—

(a) by the undertaker with the approval of [the Authority]; or

(b) in default of a determination under paragraph (a) above, by [the Authority],

on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.

(5) An approval or determination given or made by [the Authority] for the purposes of subsection (4) above—

[(a) may be given or made in relation to the provision of a particular public sewer or (as the case may be) lateral drain, in relation to the provision of sewers or lateral drains of a particular description or in relation to the provision of public sewers or lateral drains generally; and]

(b) may be revoked at any time.

(6) Any dispute between a sewerage undertaker and any other person as to—

(a) the undertakings or security required by the undertaker for the purposes of this section; or

(b) the amount required to be paid in pursuance of any such undertaking,

[may be referred to the Authority for determination under section 30A above by either party to the dispute].

[(7) In this section “relevant deficit” and “discounted aggregate deficit” have the meanings given by

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sections 100 and 100A below, respectively.]

NOTES

Derivation

Sub-ss (1), (3) derived from the Water Act 1989, s 72(1); sub-ss (2), (4)–(6) derived from the Water Act 1989, s 72(2), (8)–(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "or 98(1A)(c)" in square brackets inserted by the Water Act 2003, s 95(6)(a)(i).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): words "or (as the case may be) lateral drain" in square brackets in both places they occur inserted by the Water Act 2003, s 95(6)(a)(ii).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): in para (a) words "or, as the case may be, subsection (2A)" in square brackets inserted by the Water Act 2003, s 95(6)(a)(iii).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): para (a) substituted by the Water Act 2003, s 93(1)(a).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 93(4).

Sub-s (2A): inserted by the Water Act 2003, s 95(6)(b).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): substituted by the Water Act 2003, s 95(6)(c).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-ss (4), (5): words "the Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).
Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): para (a) substituted by the Water Act 2003, s 95(6)(d).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): words from "may be referred" to "to the dispute" in square brackets substituted by the Water Act 2003, s 93(1)(b).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 93(4).

Sub-s (7): substituted by the Water Act 2003, s 93(1)(c).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 93(4).

100 Calculation of "relevant deficit" for the purposes of section 99

(1) For the purposes of section 99 above the relevant deficit for any year on a public sewer is the amount (if any) by which the drainage charges payable for the use during that year of that sewer are exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.

(2) The annual borrowing costs of a loan of the amount required for the provision of a public sewer is the aggregate amount which would fall to be paid in any year by way of payments of interest and

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repayments of capital if an amount equal to so much of the costs reasonably incurred in providing that sewer as were not incurred in the provision of additional capacity had been borrowed, by the sewerage undertaker providing the sewer, on terms—

(a) requiring interest to be paid and capital to be repaid in twelve equal annual instalments; and

(b) providing for the amount of the interest to be calculated at such rate, and in accordance with such other provision, as may have been determined for the purposes of this subsection.

(3) A determination for the purposes of subsection (2) above shall be made either—

(a) by the undertaker with the approval of [the Authority]; or

(b) in default of such a determination, by [the Authority].

(4) For the purposes of this section the costs reasonably incurred in providing a public sewer ("the new sewer") shall include—

(a) the costs reasonably incurred in providing such other public sewers and such pumping stations as it is necessary to provide in consequence of the provision of the new sewer; and

(b) such proportion (if any) as is reasonable of the costs reasonably incurred in providing any such additional capacity in an earlier public sewer as falls to be used in consequence of the provision of the new sewer.

(5) In subsection (4) above the reference to an earlier public sewer, in relation to the new sewer, is a reference to any public sewer which—

(a) has been provided in the period of twelve years immediately before the provision of the new sewer; and

(b) was so provided in pursuance of a public sewer requisition.

(6) Any reference in this section to the provision of additional capacity in a public sewer provided in pursuance of a requirement under any enactment is a reference to such works carried out or other things done in connection with the provision of that sewer as are carried out or done for the purpose of enabling that sewer to be used for purposes in addition to those for which it is necessary to provide the sewer in order to comply with the requirement.

(7) Any reference in this section to the drainage charges payable for the use during any year of any sewer provided by a sewerage undertaker is a reference to so much of the aggregate of any charges payable to the sewerage undertaker in respect of services provided in the course of that year as represents charges which—

(a) have been imposed by the undertaker in relation to such of the premises connected with that sewer as are premises where there are buildings; and

(b) are reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purpose from those premises.

(8) An approval or determination given or made by [the Authority] for the purposes of subsection (2) above—

(a) may be given or made in relation to the provision of a particular public sewer, in relation to the provision of sewers of a particular description or in relation to the provision of public sewers generally; and

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(b) may be revoked at any time except in relation to a public sewer [in respect of which the conditions referred to in section 99(1) above have already been satisfied].

(9) In this section "public sewer requisition" means—

(a) a requirement under section 98 above (including, by virtue of paragraph 1 of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 71 of the Water Act 1989);

(b) a requirement under the provisions of section 16 of the Water Act 1973 (sewer requisitions); or

(c) a requirement under any local statutory provision corresponding to section 98 above or to any of the provisions of that section 16.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, s 72(3); sub-ss (2), (3) derived from the Water Act 1989, s 72(4); sub-ss (4), (5), (9) derived from the Water Act 1989, s 72(5); sub-ss (6), (7) derived from the Water Act 1989, s 72(6), (7); sub-s (8) derived from the Water Act 1989, s 72(9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (3), (8): words "the Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (8): in para (b) words from "in respect of" to "already been satisfied" in square brackets substituted by the Water Act 2003, s 93(2).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 93(4).

[100A Calculation of "discounted aggregate deficit" for the purposes of section 99]

[(1) For the purposes of section 99 above the discounted aggregate deficit on a public sewer is the amount equal to the sum of the estimated relevant deficits for each of the twelve years following the provision of the sewer, in each case discounted in accordance with subsection (6) below.

(2) The estimated relevant deficit for any year is the amount (if any) by which the estimated drainage charges payable for the use during that year of that sewer would be exceeded by the annual borrowing costs of a loan of the amount required for the provision of that sewer.

(3) Subsections (2) to (6), (8) and (9) of section 100 above (which relate to the annual borrowing costs of a loan of the amount required for the provision of a public sewer) shall apply for the purposes of this section as they apply for the purposes of that section.

(4) Any reference in this section to the estimated drainage charges payable for the use during any year of any sewer is a reference to so much of the aggregate of any charges expected to be payable to the sewerage undertaker for the provision of services in the course of that year as would represent charges—

(a) imposed by the undertaker in relation to such of the premises with which the sewer is

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expected to be connected as are premises where there are buildings; and

(b) reasonably attributable to the use of that sewer for the drainage for domestic sewerage purposes of those premises or to the disposal of effluent drained for any such purposes from those premises.

(5) For the purposes of subsection (4) above, a thing is expected to be the case if, at the time the relevant calculation is made, it is reasonably likely to occur.

(6) The estimated relevant deficit for a year mentioned in subsection (1) above shall be discounted in order to determine its net present value by applying such factor, and in accordance with such other provision, as may be determined by the Authority.

(7) A determination made by the Authority for the purposes of subsection (6) above—

(a) may be made in relation to the provision of a particular public sewer or in relation to the provision of public sewers generally; and

(b) may be revoked at any time except in relation to a public sewer in respect of which the conditions referred to in section 99(1) above have already been satisfied.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 93(3).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 93(4).

[101 Determination of completion date and route for requisitioned sewer or lateral drain]

[(1) A sewerage undertaker shall not be in breach of a duty imposed by section 98 above in relation to any locality or (in the case of a lateral drain) in relation to any premises unless—

(a) the period of six months beginning with the relevant day has expired; and

(b) the sewerage undertaker has not, before the end of that period, so laid (as the case may be)—

(i) the public sewer to be provided as to enable drains and private sewers to be used for the drainage of premises in the locality to communicate with the public sewer; or

(ii) the lateral drain to be provided as to enable the drain to be used for the drainage of premises to communicate with a public sewer vested in that undertaker,

at the place or places determined under subsection (3) below.

(2) The period mentioned in subsection (1)(a) above may be extended—

(a) by agreement between the undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or

(b) where there is a dispute as to whether the period should be extended, by the Authority on a reference under subsection (4) below.

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(3) The places mentioned in subsection (1)(b) above shall be—

(a) such place or places as are determined by agreement between the sewerage undertaker and the person or persons who required the provision of the public sewer or, as the case may be, lateral drain; or

(b) in default of agreement, such place or places as are determined by the Authority on a reference under subsection (4) below to be the place or places at which it is reasonable, in all the circumstances—

(i) in relation to the provision of a public sewer, for drains or private sewers to be used for the drainage of premises in the locality in question to communicate with the public sewer; or

(ii) in relation to the provision of a lateral drain—

(a) for the lateral drain to communicate with a public sewer vested in the undertaker; and

(b) for the remainder of the drain of which the lateral drain forms part to connect with the lateral drain.

(4) A reference for the purposes of subsection (2) or (3) above may be made to the Authority for determination under section 30A above by either party to the dispute.

(5) In this section "relevant day", in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following—

(a) the day on which the conditions specified in section 99 above are satisfied in relation to the requirement; and

(b) the day on which the place or places where (as the case may be)—

(i) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer; or

(ii) the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain,

are determined under subsection (3) above.]

NOTES

Derivation

This section as originally enacted derived as follows: sub-ss (1), (2) derived from the Water Act 1989, s 71(4); sub-ss (3)–(5) derived from the Water Act 1989, s 71(5), (6), (9).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Water Act 2003, s 95(7).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 95(8).

[*Provision of public sewers otherwise than by requisition*]

NOTES

Amendment

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Inserted by the Environment Act 1995, s 120, Sch 22, para 103.

[101A Further duty to provide sewers]

[(1) Without prejudice to section 98 above, it shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area if the conditions specified in subsection (2) below are satisfied.

(2) The conditions mentioned in subsection (1) above are—

(a) that the premises in question, or any of those premises, are premises on which there are buildings . . .;

(b) that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer; and

(c) that the drainage of any of the premises in question . . . is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued under this section by the Secretary of State and all other relevant considerations, to provide a public sewer for the drainage for domestic sewerage purposes of the premises in question.

(3) Without prejudice to the generality of subsection (2)(c) above, regard shall be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of this section—

(a) the geology of the locality in question or of any other locality;

(b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;

(c) the costs of providing that sewer;

(d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises or, as the case may be, the locality in question not being drained by means of a public sewer; and

(e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this section or otherwise) of public sewers, and the costs of so overcoming those effects.

(4) Guidance issued by the Secretary of State under this section may—

(a) relate to how regard is to be had to the considerations mentioned in paragraphs (a) to (e) of subsection (3) above;

(b) relate to any other matter which the Secretary of State considers may be a relevant consideration in any case and to how regard is to be had to any such matter;

(c) set out considerations, other than those mentioned in paragraphs (a) to (e) of subsection (3) above, to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this section;

(d) relate to how regard is to be had to any such consideration as is mentioned in paragraph (c) above;

(e) without prejudice to paragraphs (a) to (d) above, relate to how a sewerage undertaker is to

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discharge its functions under this section.

(5) Before issuing guidance under this section the Secretary of State shall consult—

(a) the Environment Agency[, if the guidance applies to premises in England];

[(aa) the NRBW, if the guidance applies to premises in Wales;]

(b) [the Authority]; and

(c) such other bodies or persons as he considers appropriate;

and the Secretary of State shall arrange for any guidance issued by him under this section to be published in such manner as he considers appropriate.

(6) Subject to the following provisions of this section, the duty of a sewerage undertaker by virtue of subsection (1) above 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 Authority].

(7) Any dispute between a sewerage undertaker and an owner or occupier of any premises in its area as to—

(a) whether the undertaker is under a duty by virtue of subsection (1) above to provide a public sewer to be used for any such drainage of those premises as is mentioned in that subsection;

(b) the domestic sewerage purposes for which any such sewer should be provided; or

(c) the time by which any such duty of the undertaker should be performed,

shall be determined by the [appropriate agency], and may be referred to the [appropriate agency] for determination by either of the parties to the dispute.

(8) The [appropriate agency]—

(a) shall notify the parties of the reasons for its decision on any dispute referred to it under subsection (7) above; and

(b) may make any such recommendations, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate.

(9) The decision of the [appropriate agency] on any dispute referred to it under subsection (7) above shall be final.

(10) A sewerage undertaker shall only be taken to be in breach of its duty under subsection (1) above where, and to the extent that, it has accepted, or the [appropriate agency] has determined under this section, that it is under such a duty and where any time accepted by it, or determined by the [appropriate agency] under this section, as the time by which the duty is to that extent to be performed has passed.

[(11) In this section “the appropriate agency” means—

(a) the Environment Agency, in relation to disputes between sewerage undertakers and owners or occupiers of premises in England;

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(b) the NRBW, in relation to disputes between sewerage undertakers and owners or occupiers of premises in Wales.]]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Environment Act 1995, s 120, Sch 22, para 103.

Sub-s (2): in para (a) words omitted repealed by the Water Act 2003, ss 94(a), 101(2), Sch 9, Pt 3.
Date in force: 28 May 2004: see SI 2004/641, art 4(b), (d)(i); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): in para (c) words omitted repealed by the Water Act 2003, ss 94(b), 101(2), Sch 9, Pt 3.
Date in force: 28 May 2004: see SI 2004/641, art 4(b), (d)(i); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): in para (a) words ", if the guidance applies to premises in England" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 237(1), (2)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (5): para (aa) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 237(1), (2)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-ss (5), (6): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).
Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (7): words "appropriate agency" in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 237(1), (3).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (8): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 237(1), (3).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (9): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 237(1), (3).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (10): words "appropriate agency" in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 237(1), (3).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (11): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 237(1), (4).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[101B Power to construct lateral drains following provision of public sewer]

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[(1) Where a sewerage undertaker provides a public sewer pursuant to a duty to do so imposed on it by section 98 or section 101A above, the undertaker may, at the request of the person mentioned in subsection (2) below, also provide at the same time one or more lateral drains to be used for the drainage for domestic purposes of premises in its area and to communicate with that sewer.

(2) A request under subsection (1) above may be made—

(a) in the case of a public sewer to be provided under section 98 above, by the person who requires the provision of the sewer under that section; and

(b) in the case of a public sewer to be provided under section 101A above, by the owner or occupier of any premises in respect of which the duty to provide the sewer arises under that section (but any request may only be for the provision of a lateral drain to his premises).

(3) The person making a request under this section shall pay to the water undertaker, following provision of the lateral drain, the costs reasonably incurred in or in connection with providing that drain.

(4) Any dispute between the sewerage undertaker and the person making a request under this section as to—

(a) whether a lateral drain should be provided pursuant to the request; or

(b) the costs reasonably incurred in the provision of a lateral drain,

may be referred to the Authority for determination under section 30A above by either party to the dispute.

(5) Any lateral drain provided pursuant to a request made to a sewerage undertaker under this section shall belong to the undertaker.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 95(9).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 95(10).

Adoption etc of sewers and disposal works

102 Adoption of sewers and disposal works

(1) Subject to the following provisions of this section and to sections 103, 105 and 146(3) below, a sewerage undertaker may at any time declare that—

(a) any sewer which is situated within its area or which serves the whole or any part of that area; . . .

[(aa) any lateral drain which communicates or is to communicate with a public sewer which—

(i) is so situated or serves the whole or any part of that area; and

(ii) is vested in that undertaker; or]

(b) any sewage disposal works which are so situated or which serve the whole or any part of that area,

shall, as from such date as may be specified in the declaration, become vested in the undertaker.

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(2) The owner, or any of the owners, of any sewer[, lateral drain] or sewage disposal works with respect to which a sewerage undertaker might make a declaration under this section may make an application to that undertaker requesting it to make a declaration under this section with respect to the sewer[, lateral drain] or works.

(3) A declaration or application under this section may be made with respect to a part only of a sewer.

(4) A sewerage undertaker which proposes to make a declaration under this section—

(a) shall give notice of its proposal to the owner or owners of the sewer[, lateral drain] or works in question; and

(b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under section 105 below or, as the case may be, until any appeal so lodged has been determined.

(5) A sewerage undertaker, in deciding whether a declaration should be made under this section, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—

(a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;

(b) whether the sewer [or lateral drain] is constructed under a highway or under land reserved by a planning scheme for a street;

(c) the number of buildings which the sewer [or lateral drain] is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;

(d) the method of construction and state of repair of the sewer[, lateral drain] or works; and

(e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.

(6) Any person who immediately before the making of a declaration under this section was entitled to use the sewer [or lateral drain] in question shall be entitled to use it, or any sewer [or lateral drain] substituted for it, to the same extent as if the declaration had not been made.

(7) No declaration may be made under this section in respect of any sewer or works the construction of which was completed before 1st October 1937.

NOTES

Derivation

Sub-ss (1), (4), (7) derived from the Public Health Act 1936, s 17(1), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-ss (2), (5) derived from the Public Health Act 1936, s 17(2), (4), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-s (3) derived from the Public Health Act 1936, s 17(6); sub-s (6) derived from the Public Health Act 1936, s 17(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Sub-s (1): in para (a) word omitted repealed by the Water Act 2003, ss 96(1)(a), 101(2), Sch 9, Pt 3.

Date in force: 28 May 2004: see SI 2004/641, art 4(b), (d)(i); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (1): para (aa) inserted by the Water Act 2003, s 96(1)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (2): words ", lateral drain" in square brackets in both places they occur inserted by the Water Act 2003, s 96(1)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (4): in para (a) words ", lateral drain" in square brackets inserted by the Water Act 2003, s 96(1)(c).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (5): in para (b) words "or lateral drain" in square brackets inserted by the Water Act 2003, s 96(1)(d)(i).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (5): in para (c) words "or lateral drain" in square brackets inserted by the Water Act 2003, s 96(1)(d)(ii).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (5): in para (d) words ", lateral drain" in square brackets inserted by the Water Act 2003, s 96(1)(d)(iii).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (6): words "or lateral drain" in square brackets in both places they occur inserted by the Water Act 2003, s 96(1)(e).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

See Further

See further, in relation to the disapplication of this section, to any sewer owned by a licensed infrastructure provider: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 5(2).

Subordinate Legislation

Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011, SI 2011/1566 (made under sub-s (4)).

103 Adoption of cross-border sewers etc

(1) Where a sewerage undertaker is about to take into consideration the question of making a declaration under section 102 above with respect to—

(a) any sewer which is situated within the area of another sewerage undertaker or which, though situated within its own area, serves the whole or any part of the area of another sewerage undertaker; . . .

[(aa) any lateral drain which is situated within the area of another sewerage undertaker or which, though situated within its own area, communicates or is to communicate with a public sewer which is situated within or serves the whole or any part of the area of another sewerage undertaker; or]

(b) any sewage disposal works which are situated within the area of another sewerage undertaker or which, though situated within its own area, serve the whole or any part of the

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area of another sewerage undertaker,

it shall give notice to the other undertaker.

(2) Where a sewerage undertaker is required to give notice under subsection (1) above to another undertaker, no declaration under section 102 above shall be made by the former undertaker until either—

(a) the other undertaker has consented to the declaration; or

(b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

[(3) Where—

(a) a sewer (or part of a sewer) or a lateral drain is vested, or any sewage disposal works are vested, in a relevant body; and

(b) in the case of a sewer, part of a sewer, lateral drain or works vested in railway undertakers or dock undertakers, the sewer, part or lateral drain in question is, or the works are, situated in or on land belonging to those undertakers and held or used by them for the purposes of their undertaking,

a sewerage undertaker shall not make a declaration under section 102 above with respect to (as the case may be) the sewer, or part of it, or the lateral drain or the works, except on the application of the relevant body concerned.]

(4) Where a sewerage undertaker makes a declaration under section 102 above with respect to—

(a) a sewer [or lateral drain] which is situated within the area of another sewerage undertaker; or

(b) any sewage disposal works which are so situated,

it shall forthwith give notice of the fact to that other undertaker.

(5) In this section "relevant body" means any sewerage undertaker, any local authority or county council or any railway undertakers or dock undertakers.

NOTES

Derivation

Sub-ss (1), (2) derived from the Public Health Act 1936, s 17(7), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-ss (3), (5) derived from the Public Health Act 1936, s 17(9), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, para 1, and give effect to Law Commission Recommendation No 1, Cmnd 1483; sub-s (4) derived from the Public Health Act 1936, s 17(8), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, para 1.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (a) word omitted repealed by the Water Act 2003, ss 96(2)(a), 101(2), Sch 9, Pt 3.

Date in force: 28 May 2004: see SI 2004/641, art 4(b), (d)(i); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (1): para (aa) inserted by the Water Act 2003, s 96(2)(a).

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Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (3): substituted by the Water Act 2003, s 96(2)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Sub-s (4): in para (a) words “or lateral drain” in square brackets inserted by the Water Act 2003, s 96(2)(c).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 96(3).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

104 Agreements to adopt sewer, drain or sewage disposal works, at future date

[(1) Subject to subsection (7) and section 146(3) below, a sewerage undertaker may agree with—

(a) any person constructing or proposing to construct—

(i) any sewer;

(ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or

(iii) any sewage disposal works; or

(b) any person at whose expense the undertaker is, by virtue of an agreement under section 160 below, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.]

(2) A person [mentioned in paragraph (a) or (b) of subsection (1) above] may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this section.

(3) An application under subsection (2) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(4) Where—

(a) a person who has made an application to a sewerage undertaker under subsection (2) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and

(b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 105 below, to respond to the application as gave that person a reasonable opportunity to provide the required information

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within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(5) Any agreement made under this section by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer[, lateral drain] or works to which it relates.

(6) . . .

[(6A) Without limiting the terms which may be included in an agreement under this section, the terms of an agreement which relates to a drain may include in particular—

(a) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;

(b) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;

(c) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and

(d) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.]

[(7) A sewerage undertaker shall not make an agreement under this section with respect to—

(a) a sewer, drain or sewage disposal works situated within the area of another sewerage undertaker; or

(b) a drain which is intended to communicate with a sewer which—

(i) is so situated; or

(ii) is vested in another sewerage undertaker,

until one of the conditions mentioned in subsection (8) below is satisfied.

(8) The conditions are—

(a) that other undertaker has consented to the making of the agreement; or

(b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.]

[(9) Undertakers shall have regard to any guidance about agreements under this section issued by—

(a) the Secretary of State, in relation to undertakers whose areas are wholly or mainly in England, or

(b) the Welsh Ministers, in relation to undertakers whose areas are wholly or mainly in Wales.]

NOTES

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Derivation

Sub-ss (1), (5) derived from the Public Health Act 1936, s 18(1), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-ss (2)–(4) derived from the Public Health Act 1936, s 18(4), the Water Act 1989, ss 69, 176, Sch 8, para 2(1); sub-ss (6), (7) derived from the Public Health Act 1936, s 18(2), (3), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): substituted by the Water Act 2003, s 96(4)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2): words "mentioned in paragraph (a) or (b) of subsection (1) above" in square brackets substituted by the Water Act 2003, s 96(4)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): words ", lateral drain" in square brackets inserted by the Water Act 2003, s 96(4)(c).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): repealed by the Water Act 2003, ss 96(4)(d), 101(2), Sch 9, Pt 3.

Date in force: 28 May 2004: see SI 2004/641, art 4(b), (d)(ii); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6A): inserted by the Water Act 2003, s 96(4)(e).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-ss (7), (8): substituted, for sub-s (7) as originally enacted, by the Water Act 2003, s 96(4)(f).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (9): inserted by the Flood and Water Management Act 2010, s 42(3).

Date in force (in relation to Wales): 1 October 2012: see SI 2012/2048, art 2; for transitional provisions see art 3 thereof.

Date in force (in relation to England): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

105 Appeals with respect to adoption

(1) An owner of any sewer[, lateral drain] or sewage disposal works may appeal to [the Authority] if—

(a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under section 102 above; or

(b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.

(2) Subject to section 104(4) above, a person constructing or proposing to construct a drain or sewer or any sewage disposal works may appeal to [*the Authority*] *where a sewerage undertaker—*

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(a) has refused an application under section 104 above;

(b) has offered to grant such an application on terms to which that person objects; or

(c) has failed, before the end of two months from the making of such an application, either to refuse the application or to give notice to the applicant of the terms on which it is prepared to grant the application.

[(2) A person who has entered or wants to enter an agreement under section 104 may appeal to the Authority about any matter concerning the agreement (including whether it is concluded, its terms and its operation).]

(3) The time for the making of an appeal under subsection (1) above by the owner of any sewer[, lateral drain] or sewage disposal works shall be—

(a) in the case of an appeal by virtue of paragraph (a) of that subsection, any time within two months after notice of the proposal is served on that owner; and

(b) in the case of an appeal by virtue of paragraph (b) of that subsection, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.

(4) On the hearing of an appeal under this section, [the Authority] may—

(a) in the case of an appeal under subsection (1) above, allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or

(b) in the case of an appeal under subsection (2) above—

(i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or

(ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;

and any declaration made under paragraph (a) above shall have the same effect as if it had been made by the undertaker in question.

(5) Where [the Authority] makes a declaration under subsection (4)(a) above, [it] may, if [it] thinks fit—

(a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and

(b) direct that [its] declaration shall not take effect unless any conditions so specified are accepted.

(6) Where [the Authority] makes an agreement under subsection (4)(b) above on behalf of a sewerage undertaker, [it] may do so on such terms as [it] considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as [it] considers appropriate for ensuring that the terms of the agreement are reasonable.

(7) [The Authority], in deciding, on an appeal under this section, whether any declaration or agreement should be made, shall have regard to all the circumstances of the case and, in particular, to the considerations specified in section 102(5) above; and for the purposes of this subsection, in its application in relation to an appeal under subsection (2) above, paragraphs (a) to (e) of section 102(5)

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above shall have effect with the necessary modifications.

NOTES

Derivation

Sub-ss (1), (3)–(5) derived from the Public Health Act 1936, ss 17(3), 18(5), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, paras 1, 2(1); sub-ss (2), (6) derived from the Public Health Act 1936, s 18(4), (5), the Water Act 1989, Sch 8, para 2(1); sub-s (7) derived from the Public Health Act 1936, ss 17(4), 18(6), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, paras 1, 2(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words ", lateral drain" in square brackets inserted by the Water Act 2003, s 96(5)(a).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Words "the Authority", "it", "its" and "The Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).
Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): substituted by the Flood and Water Management Act 2010, s 42(2).
Date in force (in relation to Wales): 1 October 2012: see SI 2012/2048, art 2; for transitional provisions see art 3 thereof.
Date in force (in relation to England): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Sub-s (3): words ", lateral drain" in square brackets inserted by the Water Act 2003, s 96(5)(b).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

[105A Schemes for the adoption of sewers, lateral drains and sewage disposal works]

[(1) The Secretary of State may by regulations provide for him to make schemes for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works of the descriptions set out in paragraphs (a), (aa) and (b) of section 102(1) above.

(2) The regulations may require sewerage undertakers to prepare draft schemes and to submit them to the Secretary of State.

(3) Each scheme shall relate to—

(a) the area of a sewerage undertaker, or part or parts of it; or

(b) the areas of more than one sewerage undertaker, or part or parts of them.

(4) It shall be the duty of a sewerage undertaker, in specified circumstances, to exercise its powers under section 102 above with a view to making the declaration referred to in subsection (1) of that section in relation to sewers, lateral drains or sewage disposal works which—

(a) fall within the area to which a scheme relates; and

(b) satisfy specified criteria.

(5) The circumstances and the criteria shall each be—

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(a) specified in the regulations; or

(b) determined in accordance with the regulations and specified in the scheme.

(6) In relation to the exercise of those powers pursuant to that duty—

(a) section 102 above shall have effect—

(i) with the omission of subsections (2), (5) and (7);

(ii) as if in subsection (1) the words "sections 103, 105 and 146(3) below" read "section 105B below";

(iii) with the omission of the words "or application" in subsection (3);

(iv) as if for subsection (4)(a) there were substituted—

"(a) shall give notice of its proposal to the owner or owners of the sewer, lateral drain or works in question unless, after diligent enquiry, he or they cannot be traced;

(aa) shall publish notice of its proposal in the prescribed manner; and";

(v) as if in subsection (4)(b) "two months" read "two months or, if longer, the period specified by virtue of section 105B(5) below" and "section 105 below" read "section 105B(4) or (5) below, or"; and

(vi) as if section 96(3) of the Water Act 2003 did not apply;

(b) sections 103 and 105 above shall not apply; and

(c) if the regulations so provide, section 146(3) below shall not apply in circumstances or cases specified in the regulations.

(7) A duty imposed on a sewerage undertaker under subsection (4) above shall be enforceable by the Secretary of State under section 18 above.

(8) A statutory instrument containing regulations under subsection (1) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 98.

Date in force: 1 April 2007: see SI 2007/1021, art 2(b).

Subordinate Legislation

Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011, SI 2011/1566.

[105B Adoption schemes: appeals]

[(1) Any person falling within subsection (2) below may appeal to the Authority if he is aggrieved by—

(a) the proposal of a sewerage undertaker to make a declaration under section 102 above in relation to a sewer, lateral drain or sewage disposal works, pursuant to the undertaker's duty to do so under section 105A(4) above (the "relevant duty"); or

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(b) the failure of a sewerage undertaker to make such a proposal pursuant to that duty.

(2) The persons referred to are—

(a) an owner of a sewer, lateral drain or sewage disposal works;

(b) any other person affected by the proposal, or the failure, in question.

(3) The grounds upon which a person may appeal are—

(a) in a subsection (1)(a) case, that the relevant duty is not owed in relation to the sewer, lateral drain or sewage disposal works, or that the making of the proposed declaration would be seriously detrimental to him;

(b) in a subsection (1)(b) case, that the relevant duty is owed in relation to the sewer, lateral drain or sewage disposal works; or

(c) any other prescribed ground.

(4) An appeal under subsection (1)(a) above shall be made within two months after notice of the proposal is—

(a) served on the owner of the sewer, lateral drain or sewage disposal works; or

(b) published in accordance with section 102(4) above as modified by section 105A(6) above,

(or, if both occur, within two months after whichever is the later).

(5) An appeal under subsection (1)(b) above shall be made within such period as is specified in the scheme (not being less than two months).

(6) On the hearing of an appeal under subsection (1) above, the Authority may—

(a) in a subsection (1)(a) case, allow or disallow the proposal of the sewerage undertaker; or

(b) in a subsection (1)(b) case, determine that the undertaker was not under the relevant duty in relation to the sewer, lateral drain or sewage disposal works in question,

or, in either case, make any declaration that the sewerage undertaker might have made, unless the proposal is disallowed.

(7) If, in a subsection (1)(a) case, the Authority finds that the making of the proposed declaration would be seriously detrimental to the appellant, it shall disregard any duty on the part of the sewerage undertaker to make the proposal for the purpose of determining whether to allow or disallow the proposal.

(8) If, in a subsection (1)(a) case, the Authority disallows the proposal of the sewerage undertaker, the scheme pursuant to which it was made shall have effect as if there were no duty under section 105A(4) above on the sewerage undertaker in relation to the sewer, lateral drain or sewage disposal works in question.

(9) Where the Authority makes a declaration under subsection (6) above, it may, if it thinks fit—

(a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and

(b) direct that its declaration shall not take effect unless any conditions so specified are accepted.

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(10) A declaration made under subsection (6) above shall have the same effect as if it had been made by the undertaker.

(11) The Secretary of State may by regulations make further provision in connection with appeals under this section.

(12) The regulations may, in particular, require the Authority to have regard to prescribed matters when determining an appeal under this section.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 98.

Date in force: 1 April 2007: see SI 2007/1021, art 2(b).

[105C Adoption schemes: supplementary]

[(1) The Secretary of State may vary any scheme, or revoke it.

(2) Before making regulations or any scheme under section 105A above, and before amending or revoking the regulations or varying or revoking a scheme, the Secretary of State shall consult—

(a) each sewerage undertaker which would be affected;

(b) the Authority;

(c) the Council;

(d) such other persons as the Secretary of State considers appropriate.

(3) The Secretary of State shall publish each scheme he makes, and any such scheme as varied, in the way he considers best for the purpose of bringing it to the attention of those likely to be affected by it.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 98.

Date in force: 1 April 2007: see SI 2007/1021, art 2(b).

Communication of drains and private sewers with public sewers

106 Right to communicate with public sewers

[(1) Subject to the provisions of this section—

(a) the owner or occupier of any premises, or

(b) the owner of any private sewer which drains premises,

shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.]

[(1A) In this section, and in sections 107 to 109, 111, 113 to 116, 118, 119, 124, 127, 139 and 146

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below—

(a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and

(b) for the purposes of paragraph (a) above—

(i) a "public lateral drain" is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under section 102 above or under an agreement made under section 104 above; and

(ii) "sewer standards" means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.]

(2) Subject to the provisions of Chapter III of this Part, nothing in subsection (1) above shall entitle any person—

(a) to discharge directly or indirectly into any public sewer—

(i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or

(ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment; or

(b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—

(i) foul water into a sewer provided for surface water; or

(ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or

(c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

(3) A person desirous of availing himself of his entitlement under this section shall give notice of his proposals to the sewerage undertaker in question.

(4) At any time within twenty-one days after a sewerage undertaker receives a notice under subsection (3) above, the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer[—

(a) does not satisfy the standards reasonably required by the undertaker; or

(b) is such that the making of the communication would be prejudicial to the undertaker's sewerage system].

(5) For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice under subsection (3) above relates a sewerage undertaker may, if necessary, require it to be laid open for inspection.

[(5A) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under section 102

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above.]

(6) Any question arising under subsections [(3) to (5A)] above between a sewerage undertaker and a person proposing to make a communication as to—

(a) the reasonableness of the undertaker's refusal to permit a communication to be made; or

(b) as to the reasonableness of any requirement under subsection (5) [or (5A)] above,

may, on the application of that person, be determined by [[the Authority] under section 30A above] [(and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above)].

(7) . . .

(8) Where a person proposes under this section to make a communication between a drain or sewer and such a public sewer in Greater London as is used for the general reception of sewage from other public sewers and is not substantially used for the reception of sewage from private sewers and drains—

(a) the grounds on which a sewerage undertaker may refuse to permit the communication shall be such grounds as the undertaker thinks fit; and

(b) no application to [the Authority] may be made under subsection (6) above in respect of any refusal under this subsection.

(9) In this section "factory" has the same meaning as in the Factories Act 1961.

NOTES

Derivation

Sub-ss (1) (2) derived from the Public Health Act 1936, s 34(1), and the Water Act 1973, s 14(2), (4), the Water Act 1989, s 69, Sch 8, paras 1, 2(6)(a); sub-ss (3)–(6) derived from the Public Health Act 1936, s 34(3), the Water Act 1973, s 14(2), and the Water Act 1989, s 69, Sch 8, para 1; sub-s (7) derived from the Public Health Act 1936, ss 300-302; sub-s (8) derived from the Water Act 1973, s 40, Sch 8, para 37, and the Water Act 1989, s 69, Sch 8, para 1; sub-s (9) derived from the Public Health Act 1936, s 343(1), and the Factories Act 1961, s 184, Sch 6, para 1.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): substituted by the Competition and Service (Utilities) Act 1992, s 43(2).

Sub-s (1A): inserted by the Water Act 2003, s 99(1), (2).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): paras (a), (b) substituted by the Water Act 2003, s 99(1), (3).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5A): inserted by the Water Act 2003, s 99(1), (4).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): words "(3) to (5A)" in square brackets substituted by the Water Act 2003, s 99(1), (5)(a).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): in para (b) words "or (5A)" in square brackets inserted by the Water Act 2003, s 99(1), (5)(b).

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Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): words in square brackets ending with the words “section 30A above” substituted by the Competition and Service (Utilities) Act 1992, s 35(1), (8).

Sub-ss (6), (8): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): words “(and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above)” in square brackets inserted by the Water Act 2003, s 99(1), (5)(c).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (7): repealed by the Competition and Service (Utilities) Act 1992, ss 35(1), (8), 56(7), Sch 2.

See Further

See further, in relation to the disapplication of sub-s (8) above, where the proposed communication involves a drain or sewer serving Crossrail: the Crossrail Act 2008, s 40, Sch 14, para 15.

[106B Requirement to enter into agreement before construction]

[(1) A person may exercise the right under section 106(1) in respect of a lateral drain or sewer constructed after the commencement of this section only if Conditions 1 and 2 are satisfied.

(2) Condition 1 is that an agreement was entered into under section 104 in respect of the drain or sewer.

(3) Condition 2 is that the agreement included—

(a) provision about the standards according to which the drain or sewer was to be constructed, and

(b) provision about adoption of the drain or sewer by the sewerage undertaker.

(4) Provision for the purposes of Condition 2(a) must either—

(a) incorporate or accord with standards published by the Minister, or

(b) depart from those standards by express consent of the parties to the agreement.

(5) Provision for the purposes of Condition 2(b) must—

(a) include provision for adoption to occur automatically upon the occurence of specified events, and

(b) comply with any regulations made by the Minister (which may concern the provision required by paragraph (a) of this subsection).

(6) Subsection (1) does not apply—

(a) to drainage systems required to be approved in accordance with Schedule 3 to the Flood and Water Management Act 2010, or

(b) in other circumstances specified by the Minister in regulations.

(7) Where a person seeks to exercise the right under section 106(1) in reliance on satisfying Conditions 1 and 2, an undertaker may not refuse connection—

(a) whether or not in reliance on section 106(4), and

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(b) whether or not the terms of the agreement under section 104 (including terms required by this section) have been complied with.

(8) In this section "the Minister" means—

(a) the Secretary of State, in relation to sewerage undertakers whose areas are wholly or mainly in England, and

(b) the Welsh Ministers, in relation to sewerage undertakers whose areas are wholly or mainly in Wales.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 42(1).

Date in force (for the purpose of making regulations under sub-ss (5), (6)): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (in relation to Wales for remaining purposes): 1 October 2012: see SI 2012/2048, art 2; for transitional provisions see art 3 thereof.

Date in force (in relation to England for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

107 Right of sewerage undertaker to undertake the making of communications with public sewers

(1) Where a person gives to a sewerage undertaker notice under section 106 above of his proposal to have his drains or sewer made to communicate with a public sewer of that undertaker, the undertaker may—

(a) within fourteen days after the receipt of the notice; or

(b) if any question arising under the notice requires to be determined by [the Authority], within fourteen days after the determination of that question,

give notice to that person that the undertaker intends itself to make the communication.

(2) If, after a notice has been given to any person under subsection (1) above, that person proceeds himself to make the communication, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) Where a sewerage undertaker has given a notice under subsection (1) above—

(a) the undertaker shall have all such rights in respect of the making of the communication as the person desiring it to be made would have; but

(b) it shall not be obligatory on the undertaker to make the communication until either—

(i) there has been paid to the sewerage undertaker any such sum, not exceeding the undertaker's reasonable estimate of the cost of the work, as the undertaker may have required to be paid to it; or

(ii) there has been given to the undertaker such security for the payment of the cost of the work as it may reasonably have required.

(4) If any payment made to a sewerage undertaker under subsection (3) above exceeds the expenses reasonably incurred by it in the carrying out of the work in question, the excess shall be repaid

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by the undertaker; and, if and so far as those expenses are not covered by such a payment, the undertaker may recover the expenses, or the balance of them, from the person for whom the work was done.

[(4A) Any dispute between a sewerage undertaker and any other person as to—

(a) whether the undertaker's estimate of the cost of works given under subsection (3)(b)(i) above is reasonable,

(b) whether any requirement of security for the payment of the cost of works was reasonably made by the undertaker, or

(c) whether any excess is repayable, or any expenses are recoverable, by the undertaker under subsection (4) above, or the amount of any such excess or expenses,

may be referred to [the Authority] for determination under section 30A above by either party to the dispute.]

(5) Sections 291, 293 and 294 of the Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

(6) For the purposes of this section, the making of the communication between a drain or private sewer and a public sewer includes all such work as involves the breaking open of a street.

NOTES

Derivation

Sub-ss (1), (2) derived from the Public Health Act 1936, s 36(1), the Water Act 1973, s 14(2), the Control of Pollution Act 1974, s 99, Sch 2, para 9, the Criminal Justice Act 1982, s 38, 46, the Water Act 1989, s 69, Sch 8, para 1; sub-s (3) derived from the Public Health Act 1936, s 36(2), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, paras 1, 2(7); sub-ss (4), (6) derived from the Public Health Act 1936, s 36(3), (4), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-s (5) derived from the Public Health Act 1936, ss 291, 293, 294.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (4A): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (4A): inserted by the Competition and Service (Utilities) Act 1992, s 35(1), (9).

108 Communication works by person entitled to communication

(1) Where a sewerage undertaker does not under section 107 above elect itself to make a communication to which a person is entitled under section 106 above, the person making it shall—

(a) before commencing the work, give reasonable notice to any person directed by the undertaker to superintend the carrying out of the work; and

(b) afford any such person all reasonable facilities for superintending the carrying out of the

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work.

(2) For the purpose—

(a) of exercising his rights under section 106 above; or

(b) of examining, repairing or renewing any drain or private sewer draining his premises into a public sewer,

the owner or occupier of any premises shall be entitled to exercise the same powers as, for the purpose of carrying out its functions, are conferred on a sewerage undertaker by sections 158 and 161(1) below.

(3) The provisions of Part VI of this Act shall apply, with the necessary modifications, in relation to the power conferred by subsection (2) above as they apply in relation to the power conferred by sections 158 and 161(1) below.

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, s 34(4), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-ss (2), (3) derived from the Public Health Act 1936, s 34(2), the Water Act 1989, s 69, Sch 8, para 2(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

109 Unlawful communications

(1) Any person who causes a drain or sewer to communicate with a public sewer—

(a) in contravention of any of the provisions of section 106 or 108 above; or

(b) before the end of the period mentioned in subsection (4) of that section 106,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under this section, such an undertaker may—

(a) close any communication made in contravention of any of the provisions of section 106 or 108 above; and

(b) recover from the offender any expenses reasonably incurred by the undertaker in so doing.

(3) Sections 291, 293 and 294 of the Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

NOTES

Derivation

Sub-ss (1), (2) derived from the Public Health Act 1936, s 34(5), the Water Act 1973, s 14(2), the Control of Pollution Act 1974, s 99, Sch 2, para 8, the Criminal Justice Act 1982, ss 38, 46, and the Water Act 1989, s 69, Sch 8, para 1; sub-s (3) derived from the Public Health Act 1936, ss 291,

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293, 294.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Connections between public sewers

110 Determination of disputes with respect to cross boundary sewers

(1) Where any part of a sewer is vested in a sewerage undertaker by virtue of section 70 of the Water Act 1989 (cross boundary sewers), the terms on which that part of that sewer—

(a) communicates with such parts of that sewer or of any other sewer; or

(b) discharges into any such sewage disposal works,

as immediately before 1st September 1989 were vested in the same water authority as that part of that sewer but, by virtue of that section, are vested in another sewerage undertaker shall be determined, in default of agreement, by [the Authority].

(2) A determination by [the Authority] under this section shall have effect as an agreement between the sewerage undertakers in question but may be varied or revoked by a subsequent determination made by [the Authority] on the application of either of those undertakers, as well as by agreement between the undertakers.

(3) In making a determination under this section, [the Authority] shall have regard to the desirability of a sewerage undertaker's recovering the costs resulting from its allowing the sewers of other sewerage undertakers to communicate with its sewers or to discharge into its sewage disposal works and of its securing a reasonable return on its capital.

NOTES

Derivation

This section derived from the Water Act 1989, s 70(3)–(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Words "the Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[110A New connections with public sewers]

[(1) Where, on the application of any qualifying person—

(a) it appears to [the Authority] that it is necessary or expedient for the purposes of this Part that the sewerage undertaker specified in the application ("the established undertaker") should permit a main connection into his sewerage system, and

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(b) [the Authority] is satisfied that the making of such a connection cannot be secured by agreement,

[the Authority] may by order require the established undertaker to allow the connection for such period and on such terms and conditions as may be provided in the order.

(2) In this section "qualifying person" means—

(a) a sewerage undertaker; or

(b) a person who has made an application for an appointment or variation under section 8 above which has not been determined.

(3) In subsection (1) above a "main connection" means a connection—

(a) between a sewer or disposal main and a sewer or disposal main; or

(b) a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works.

(4) Where the application is made by a person who is not a sewerage undertaker at the time when the application is made, an order made under this section in response to that application shall be expressed not to come into force until the applicant becomes a sewerage undertaker for the area specified in the order, or for an area which includes that area.

(5) Subject to subsection (4) above, an order under this section shall have effect as an agreement between the established undertaker and the applicant but may be varied or revoked by a subsequent order made by [the Authority] on the application of either party to the agreement, as well as by agreement between the parties.

[(6) The Authority shall not make an order under this section unless it has first consulted—

(a) the Environment Agency, where the proposed main connection would discharge to a sewerage system that would dispose of that discharge to any controlled waters in England;

(b) the NRBW, where the proposed main connection would discharge to a sewerage system that would dispose of that discharge to any controlled waters in Wales.]

(7) In exercising his functions under this section, [the Authority] shall have regard to the desirability of—

(a) facilitating effective competition within the sewerage services industry;

(b) the existing undertaker's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;

(c) the existing undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;

(d) not putting at risk the ability of the existing undertaker to meet its existing obligations, or likely future obligations, to provide such services.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 45.

Sub-ss (1), (5), (7): words “the Authority”, “The Authority” and “it” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 238.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Provisions protecting sewerage system

111 Restrictions on use of public sewers

(1) Subject to the provisions of Chapter III of this Part, no person shall throw, empty or turn, or suffer or permit to be thrown or emptied or to pass, into any public sewer, or into any drain or sewer communicating with a public sewer—

(a) any matter likely to injure the sewer or drain, to interfere with the free flow of its contents or to affect prejudicially the treatment and disposal of its contents; or

(b) any such chemical refuse or waste steam, or any such liquid of a temperature higher than [forty-three degrees Celsius], as by virtue of subsection (2) below is a prohibited substance; or

(c) any petroleum spirit or carbide of calcium.

(2) For the purposes of subsection (1) above, chemical refuse, waste steam or a liquid of a temperature higher than that mentioned in that subsection is a prohibited substance if (either alone or in combination with the contents of the sewer or drain in question) it is or, in the case of the liquid, is when so heated—

(a) dangerous;

(b) the cause of a nuisance; or

(c) injurious, or likely to cause injury, to health.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum and to a further fine not exceeding £50 for each day on which the offence continues after conviction;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) For the purposes of so much of subsection (3) above as makes provision for the imposition of a daily penalty—

(a) the court by which a person is convicted of the original offence may fix a reasonable date from the date of conviction for compliance by the defendant with any directions given by the court; and

(b) where a court has fixed such a period, the daily penalty shall not be imposed in respect of any day before the end of that period.

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(5) In this section the expression “petroleum spirit” means any such—

(a) crude petroleum;

(b) oil made from petroleum or from coal, shale, peat or other bituminous substances; or

(c) product of petroleum or mixture containing petroleum,

as, when tested in the manner prescribed by or under the Petroleum (Consolidation) Act 1928, gives off an inflammable vapour at a temperature of less than [twenty-three degrees Celsius].

NOTES

Derivation

Sub-ss (1), (5) derived from the Public Health Act 1936, s 27(1), (3); sub-s (2) derived from the Public Health Act 1936, ss 27(1), 343(1); sub-s (3) derived from the Public Health Act 1936, s 27(2), the Control of Pollution Act 1974, Sch 2, para 7, the Magistrates’ Courts Act 1980, s 32(2); sub-s (4) derived from the Public Health Act 1936, s 297.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (b) words “forty-three degrees Celsius” in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 3, para 39(1), (2)(a).

Date in force: 1 April 2007: see SI 2007/1021, art 2(d).

Sub-s (5): words “twenty-three degrees Celsius” in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 3, para 39(1), (2)(b).

Date in force: 1 April 2007: see SI 2007/1021, art 2(d).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

112 Requirement that proposed drain or sewer be constructed so as to form part of general system

(1) Where—

(a) a person proposes to construct a drain or sewer; and

(b) a sewerage undertaker considers that the proposed drain or sewer is, or is likely to be, needed to form part of a general sewerage system which that undertaker provides or proposes to provide,

the undertaker may require that person to construct the drain or sewer in a manner differing, as regards material or size of pipes, depth, fall, direction or outfall or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it.

(2) If any person on whom requirements are imposed under this section by a sewerage undertaker is aggrieved by the requirements, he may within twenty-eight days appeal to [the Authority].

(3) On an appeal under subsection (2) above with respect to any requirements, [the Authority] may either disallow the requirements or allow them with or without modification.

(4) It shall be the duty of a person on whom requirements are imposed by a sewerage undertaker

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under this section to comply with those requirements.

(5) The duty of any person by virtue of subsection (4) above to comply with the requirements of a sewerage undertaker shall be owed to the undertaker; and any breach of that duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

(6) A sewerage undertaker which exercises the powers conferred on it by this section shall—

(a) repay to the person constructing the drain or sewer the extra expenses reasonably incurred by that person in complying with the undertaker's requirements; and

(b) until the drain or sewer becomes a public sewer, from time to time repay to that person so much of any expenses reasonably incurred by him in repairing or maintaining the drain or sewer as may be attributable to the undertaker's requirements having been imposed and complied with.

(7) Nothing in this section shall apply in relation to so much of any drain or sewer as is proposed to be constructed by any railway undertakers or dock undertakers in or on land which—

(a) belongs to them; and

(b) is held or used by them for the purposes of their undertaking.

[(8) A requirement imposed under this section may not be inconsistent with, or more onerous than, standards published for the purposes of section 106B.]

NOTES

Derivation

Sub-ss (1)–(4) derived from the Public Health Act 1936, s 19(1), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-s (5) derived from the Public Health Act 1936, s 19(3), the Water Act 1989, Sch 8, para 2(2); sub-s (6) derived from the Public Health Act 1936, s 19(2), the Water Act 1989, Sch 8, para 2(2); sub-s (7) derived from the Public Health Act 1936, s 19(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (2), (3): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (8): inserted by the Flood and Water Management Act 2010, s 42(4).

Date in force (in relation to Wales): 1 October 2012: see SI 2012/2048, art 2; for transitional provisions see art 3 thereof.

Date in force (in relation to England): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

See Further

See further, in relation to the disapplication of this section, to any sewer or drain to be constructed by a licensed infrastructure provider: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 6(7).

113 Power to alter drainage system of premises in area

(1) Where any premises have a drain or sewer communicating with a public sewer or a cesspool, but

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that system of drainage, though sufficient for the effectual drainage of the premises—

(a) is not adapted to the general sewerage system of the area; or

(b) is, in the opinion of the sewerage undertaker for the area, otherwise objectionable,

the undertaker may, at its own expense, close the existing drain or sewer and fill up the cesspool, if any, and do any work necessary for that purpose.

(2) The power conferred on a sewerage undertaker by subsection (1) above shall be exercisable on condition only that the undertaker first provides, in a position equally convenient to the owner of the premises in question, a drain or sewer which—

(a) is equally effectual for the drainage of the premises; and

(b) communicates with a public sewer.

(3) A sewerage undertaker which proposes to carry out any work under this section shall give notice of its proposals to the owner of the premises in question

.

(4) If the owner of the premises is aggrieved by the proposals, whether as regards the position or the sufficiency of the drain or sewer proposed to be provided for the drainage of the premises, he may [refer the matter to [the Authority] for determination under section 30A above].

(5) . . .

(6) The Secretary of State may by regulations make provision with respect to consents and the conditions of consents for discharges of trade effluent into the sewer of a sewerage undertaker through a drain or sewer provided in pursuance of this section.

(7) In this section—

"cesspool" includes a settlement tank or other tank for the reception or disposal of foul matter from buildings; and

"trade effluent" has the same meaning as in Chapter III of this Part.

NOTES

Derivation

Sub-ss (1)–(4) derived from the Public Health Act 1936, s 42(1), (2), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-s (5) derived from the Public Health Act 1936, ss 300-302; sub-s (6) derived from the Control of Pollution Act 1974, s 43(6), the Water Act 1989, s 69, Sch 8, para 5(1)(a); sub-s (7) derived from the Public Health Act 1936, s 90(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (4): words from "refer the matter" to "section 30A above" in square brackets substituted by the Competition and Service (Utilities) Act 1992, s 35(1), (11)(a).

Sub-s (4): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

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Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): repealed by the Competition and Service (Utilities) Act 1992, ss 35(1), (11)(b), 56(7), Sch 2.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

114 Power to investigate defective drain or sewer

(1) Where it appears to a sewerage undertaker that there are reasonable grounds for believing—

(a) that any drain connecting with a public sewer, or any private sewer so connecting, is in such a condition as to be injurious or likely to cause injury to health or as to be a nuisance; or

(b) that any such drain or private sewer is so defective as to admit subsoil water,

the undertaker may examine the condition of the drain or sewer and, for that purpose, may apply any test, other than a test by water under pressure and, if the undertaker deems it necessary, open the ground.

(2) If on examination the drain or sewer is found to be in proper condition, the undertaker shall, as soon as possible, reinstate any ground which has been opened by it and make good any damage done by the undertaker.

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, ss 48(1), (1A), 343(1), the Water Act 1973, s 40(2), Sch 8, para 39, the Water Act 1989, s 69, Sch 8, para 1; sub-s (2) derived from the Public Health Act 1936, s 48(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

[Sustainable drainage]

NOTES

Amendment

Inserted by the Water Act 2014, s 21(1).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(d).

[114A Drainage systems relieving public sewers]

[(1) Sewerage undertakers may construct, on their own or on another's land, drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.

(2) A sewerage undertaker may maintain and operate a drainage system constructed by it under subsection (1).

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(3) In this section—

"drainage system" means a structure designed to receive rainwater and other surface water, other than a natural watercourse;

"natural watercourse" means a river or stream;

"rainwater" includes snow and other precipitation;

"structure" includes—

(a) any part of an existing or proposed structure, and

(b) any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or other surface water.

(4) The powers conferred by subsections (1) and (2) are not to be regarded as functions of a sewerage undertaker for the purposes of section 155 (compulsory purchase of land required for the purposes of carrying out functions of relevant undertakers).]

NOTES

Amendment

Inserted by the Water Act 2014, s 21(1).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(d).

Use of pipes for sewerage purposes

115 Use of highway drains as sewers and vice versa

(1) Subject to the provisions of this section, a relevant authority and a sewerage undertaker may agree that—

(a) any drain or sewer which is vested in the authority in their capacity as a highway authority may, upon such terms as may be agreed, be used by the undertaker for the purpose of conveying surface water from premises or streets;

(b) any public sewer vested in the undertaker may, upon such terms as may be agreed, be used by the authority for conveying surface water from roads repairable by the authority.

(2) Where a sewer or drain with respect to which a relevant authority and a sewerage undertaker propose to make an agreement under this section discharges, whether directly or indirectly, into the sewers or sewage disposal works of another sewerage undertaker, the agreement shall not be made without the consent of that other undertaker.

(3) Subject to subsection (4) below, a consent given by a sewerage undertaker for the purposes of subsection (2) above may be given on such terms as that undertaker thinks fit.

(4) Neither a relevant authority nor a sewerage undertaker shall—

(a) unreasonably refuse to enter into an agreement for the purposes of this section; or

(b) insist unreasonably upon terms unacceptable to the other party;

and a sewerage undertaker shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party.

(5) Any question arising under this section as to whether or not any authority or undertaker is acting

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unreasonably shall be referred to the Secretary of State, whose decision shall be final.

(6) The powers by virtue of paragraph (a) of subsection (1) above of a relevant authority and a sewerage undertaker to enter into an agreement shall be exercisable by two relevant authorities as they would be exercisable if one of them were a sewerage undertaker.

(7) Nothing in this section shall be construed as limiting the rights of a relevant authority under section 264 of the Highways Act 1980.

(8) Part XII of the Public Health Act 1936 shall apply for the purposes of the provisions of this section which confer functions on relevant authorities as they apply for the purposes of the provisions of that Act.

(9) In this section "relevant authority" means a county council or any local authority except a non-metropolitan district council.

(10) The provisions of this section are subject to the provisions of section 146(4) below.

NOTES

Derivation

Sub-ss (1), (2)–(5), (9) derived from the Public Health Act 1936, s 21(1)–(3), (5), the Water Act 1973, s 14(2), the Local Government Act 1985, s 8, Sch 4, para 47, the Water Act 1989, s 69, Sch 8, paras 1, 2(3); sub-s (7) derived from the Public Health Act 1936, s 21(4), the Highways Act 1980, s 343(2), Sch 24, para 4(b), the Local Government Act 1985, s 8, Sch 4, para 47.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

116 Power to close or restrict use of public sewer

(1) Subject to subsection (3) below, a sewerage undertaker may discontinue and prohibit the use of any public sewer which is vested in the undertaker.

(2) A discontinuance or prohibition under this section may be for all purposes, for the purpose of foul water drainage or for the purpose of surface water drainage.

(3) Before any person who is lawfully using a sewer for any purpose is deprived under this section by a sewerage undertaker of the use of the sewer for that purpose, the undertaker shall—

(a) provide a sewer which is equally effective for his use for that purpose; and

(b) at the undertaker's own expense, carry out any work necessary to make that person's drains or sewers communicate with the sewer provided in pursuance of this subsection.

[(4) Any dispute arising under subsection (3)(a) above between a sewerage undertaker and any other person as to the effectiveness of any sewer provided by the undertaker for that person's use may be referred to [the Authority] for determination under section 30A above by either party to the dispute.]

NOTES

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Derivation

This section derived from the Public Health Act 1936, s 22, the Water Act 1989, s 69, Sch 8, para 2(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (4): inserted by the Competition and Service (Utilities) Act 1992, s 35(1), (12).

Sub-s (4): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

[Complaints]

NOTES

Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 33.

[116A Procedures for dealing with complaints]

[(1) Each sewerage undertaker shall establish a procedure for dealing with complaints made by its customers or potential customers in connection with the provision of sewerage services.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

(a) the sewerage undertaker has consulted the [regional committee] to which it has been allocated; and

(b) the proposed procedure or modification has been approved by [the Authority].

(3) The sewerage undertaker shall—

(a) publicise the procedure in such manner as may be approved by [the Authority]; and

(b) send a description of the procedure, free of charge, to any person who asks for one.

(4) [The Authority] may give a direction to a sewerage undertaker requiring the undertaker to review its procedure or the manner in which the procedure operates.

(5) A direction under subsection (4) above—

(a) may specify the manner in which the review is to be conducted; and

(b) shall require a written report of the review to be made to [the Authority].

(6) Where [the Authority] receives a report under subsection (5)(b) above, [it] may, after consulting the sewerage undertaker, direct the undertaker to make such modifications of—

(a) the procedure; or

(b) the manner in which the procedure operates,

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as may be specified in the direction.

(7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.

(8) The duty of a sewerage undertaker to comply with subsection (1) above and with any direction given to it under subsection (4) or (6) above shall be enforceable by [the Authority] under section 18 above.

(9) Where [the Authority] is considering whether to exercise [its] powers under subsection (4) or (6) above in relation to a sewerage undertaker, it shall be the duty of that undertaker to give [it] such information as [it] may reasonably require for the purpose of assisting [it] in coming to a decision.

(10) Section 202 below shall have effect, with the necessary modifications, in relation to information which [the Authority] requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Competition and Service (Utilities) Act 1992, s 33.

Sub-s (2): in para (a) words "regional committee" in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (3).

Date in force: 1 October 2005: see SI 2005/2714, art 2(l)(v)(aa), (cc).

Sub-ss (2)–(6), (8)–(10): words "the Authority", "The Authority", "it" and "its" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Interpretation of Chapter II

117 Interpretation of Chapter II

(1) In this Chapter, except in so far as the context otherwise requires—

"dock undertakers" means persons authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on any dock, harbour, canal or inland navigation;

"domestic sewerage purposes", in relation to any premises, means any one or more of the following purposes, that is to say—

(a) the removal, from buildings on the premises and from land occupied with and appurtenant to the buildings, of the contents of lavatories;

(b) the removal, from such buildings and from such land, of water which has been used for cooking or washing; and

(c) the removal, from such buildings and such land, of surface water;

but does not, by virtue of paragraph (b) of this definition, include the removal of any water

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used for the business of a laundry or for a business of preparing food or drink for consumption otherwise than on the premises.

(2) References in this Chapter to the construction of a sewer or of any sewage disposal works include references to the extension of any existing sewer or works.

(3) In this Chapter "local authority", in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

(4) Every application made or consent given under this Chapter shall be made or given in writing.

(5) Nothing in sections 102 to 109 above or in sections 111 to 116 above shall be construed as authorising a sewerage undertaker to construct or use any public or other sewer, or any drain or outfall—

(a) in contravention of any applicable provision of the Water Resources Act 1991 [or the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675)]; or

(b) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake.

(6) A sewerage undertaker shall so carry out its functions under sections 102 to 105, 112, 115 and 116 above as not to create a nuisance.

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, s 343(1), the Water Act 1989, s 71(2); sub-s (2) derived from the Public Health Act 1936, s 90(5); sub-s (3) derived from the Water Act 1989, s 71(9); sub-s (4) derived from the Public Health Act 1936, s 283(1); sub-ss (5), (6) derived from the Public Health Act 1936, s 30, 31, the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (5): in para (a) words "or the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675)" in square brackets inserted by the Water Act 2014, s 56, Sch 7, paras 2, 97.

Date in force: 1 January 2015: see SI 2014/3320, art 2(2)(d), (e)(i), (ii).

Chapter III
Trade Effluent

Consent for discharge of trade effluent into public sewer

118 Consent required for discharge of trade effluent into public sewer

(1) Subject to the following provisions of this Chapter, the occupier of any trade premises in the area of a sewerage undertaker may discharge any trade effluent proceeding from those premises into the undertaker's public sewers if he does so with the undertaker's consent.

(2) Nothing in this Chapter shall authorise the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer.

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(3) The following, that is to say—

(a) the restrictions imposed by paragraphs (a) and (b) of section 106(2) above; and

(b) section 111 above so far as it relates to anything falling within paragraph (a) or (b) of subsection (1) of that section,

shall not apply to any discharge of trade effluent which is lawfully made by virtue of this Chapter.

(4) Accordingly, subsections (3) to (8) of section 106 above and sections 108 and 109 above shall have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of this Chapter as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by subsection (1) of section 106 above.

(5) If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorisation as is necessary for the purposes of this Chapter, the occupier of the premises shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

NOTES

Derivation

Sub-s (1) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 1(1), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-s (2) derived from the Public Health Act 1961, s 69(1); sub-ss (3), (4) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 1(2); sub-s (5) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 2(5), (5A), the Water Act 1989, Sch 8, para 3(1) and gives effect to Law Commission Recommendation No 2, Cmnd 1483.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Consents on an application

119 Application for consent

(1) An application to a sewerage undertaker for a consent to discharge trade effluent from any trade premises into a public sewer of that undertaker shall be by notice served on the undertaker by the owner or occupier of the premises.

(2) An application under this section with respect to a proposed discharge of any such effluent shall state—

(a) the nature or composition of the trade effluent;

(b) the maximum quantity of the trade effluent which it is proposed to discharge on any one day; and

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(c) the highest rate at which it is proposed to discharge the trade effluent.

NOTES

Derivation

This section derived from the Public Health (Drainage of Trade Premises) Act 1937, s 2(1), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, paras 1, 3(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

120 Applications for the discharge of special category effluent

(1) Subject to subsection (3) below, where a notice containing an application under section 119 above is served on a sewerage undertaker with respect to discharges of any special category effluent, it shall be the duty of the undertaker to refer to [the appropriate agency] the questions—

(a) whether the discharges to which the notice relates should be prohibited; and

(b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to subsection (3) below, a reference which is required to be made by a sewerage undertaker by virtue of subsection (1) above shall be made before the end of the period of two months beginning with the day after the notice containing the application is served on the undertaker.

(3) There shall be no obligation on a sewerage undertaker to make a reference under this section in respect of any application if, before the end of the period mentioned in subsection (2) above, there is a refusal by the undertaker to give any consent on the application.

(4) It shall be the duty of a sewerage undertaker where it has made a reference under this section not to give any consent, or enter into any agreement, with respect to the discharges to which the reference relates at any time before [the appropriate agency] serves notice on the undertaker of his determination on the reference.

(5) Every reference under this section shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which it is made.

(6) It shall be the duty of a sewerage undertaker, on making a reference under this section, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether the discharges to which the reference relates are to be by the owner or by the occupier.

[(9) If a sewerage undertaker fails, within the period provided by subsection (2) above, to refer to [the appropriate agency] any question which he is required by subsection (1) above to refer to [the appropriate agency], the undertaker shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(10) If [the appropriate agency] becomes aware of any such failure as is mentioned in subsection (9)

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above, [the appropriate agency] may—

(a) if a consent under this Chapter to make discharges of any special category effluent has been granted on the application in question, exercise its powers of review under section 127 or 131 below, notwithstanding anything in subsection (2) of the section in question; or

(b) in any other case, proceed as if the reference required by this section had been made.]

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, Sch 9, para 1(1); sub-ss (2), (3) derived from the Water Act 1989, Sch 9, para 1(2); sub-ss (4), (5) derived from the Water Act 1989, Sch 9, para 1(4); sub-s (6) derived from the Water Act 1989, Sch 9, paras 1(5), 9; sub-ss (7), (8) derived from the Water Act 1989, Sch 9, para 5.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "the appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 239.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): words "the appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 239.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-ss (9), (10): substituted, for sub-ss (7), (8) as originally enacted, by the Environment Act 1995, s 120, Sch 22, para 105(4).

Sub-s (9): words "the appropriate agency" in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 239.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (10): words "the appropriate agency" in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 239.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

121 Conditions of consent

(1) The power of a sewerage undertaker, on an application under section 119 above, to give a consent with respect to the discharge of any trade effluent shall be a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose with respect to—

(a) the sewer or sewers into which the trade effluent may be discharged;

(b) the nature or composition of the trade effluent which may be discharged;

(c) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer; and

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(d) the highest rate at which trade effluent may be discharged, either generally or into a particular sewer.

(2) Conditions with respect to all or any of the following matters may also be attached under this section to a consent to the discharge of trade effluent from any trade premises—

(a) the period or periods of the day during which the trade effluent may be discharged from the trade premises into the sewer;

(b) the exclusion from the trade effluent of all condensing water;

(c) the elimination or diminution, in cases falling within subsection (3) below, of any specified constituent of the trade effluent, before it enters the sewer;

(d) the temperature of the trade effluent at the time when it is discharged into the sewer, and its acidity or alkalinity at that time;

(e) the payment by the occupier of the trade premises to the undertaker of charges for the reception of the trade effluent into the sewer and for the disposal of the effluent;

(f) the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take samples, at any time, of what is passing into the sewer from the trade premises;

(g) the provision, testing and maintenance of such meters as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewer;

(h) the provision, testing and maintenance of apparatus for determining the nature and composition of any trade effluent being discharged from the premises into the sewer;

(i) the keeping of records of the volume, rate of discharge, nature and composition of any trade effluent being discharged and, in particular, the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition attached to the consent; and

(j) the making of returns and giving of other information to the sewerage undertaker concerning the volume, rate of discharge, nature and composition of any trade effluent discharged from the trade premises into the sewer.

(3) A case falls within this subsection where the sewerage undertaker is satisfied that the constituent in question, either alone or in combination with any matter with which it is likely to come into contact while passing through any sewers—

(a) would injure or obstruct those sewers, or make the treatment or disposal of the sewage from those sewers specially difficult or expensive; or

(b) in the case of trade effluent which is to be or is discharged—

(i) into a sewer having an outfall in any harbour or tidal water; or

(ii) into a sewer which connects directly or indirectly with a sewer or sewage disposal works having such an outfall,

would cause or tend to cause injury or obstruction to the navigation on, or the use of, the harbour or tidal water.

(4) In the exercise of the power conferred by virtue of subsection (2)(e) above, regard shall be had—

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(a) to the nature and composition and to the volume and rate of discharge of the trade effluent discharged;

(b) to any additional expense incurred or likely to be incurred by a sewerage undertaker in connection with the reception or disposal of the trade effluent; and

(c) to any revenue likely to be derived by the undertaker from the trade effluent.

(5) If, in the case of any trade premises, a condition imposed under this section is contravened, the occupier of the premises shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

(6) In this section "harbour" and "tidal water" have the same meanings as in the [Merchant Shipping Act 1995].

(7) This section has effect subject to the provisions of sections 133 and 135(3) below.

NOTES

Derivation

Sub-s (1) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 2(3), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, paras 1, 3(1)(b); sub-ss (2)–(4) derived from the Public Health Act 1961, ss 1(3), 59(1), (2), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, para 1; sub-s (5) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 2(5), (5A), the Water Act 1989, Sch 8, para 3(1)(c); sub-s (6) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 14(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (6): words "Merchant Shipping Act 1995" in square brackets substituted by the Merchant Shipping Act 1995, s 314(2), Sch 13, para 89(a).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

122 Appeals to the Director with respect to decisions on applications etc

(1) Any person aggrieved by—

(a) the refusal of a sewerage undertaker to give a consent for which application has been duly made to the undertaker under section 119 above;

(b) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application; or

(c) any condition attached by a sewerage undertaker to such a consent,

may appeal to [the Authority].

(2) On an appeal under this section in respect of a refusal or failure to give a consent, [the Authority]

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may give the necessary consent, either unconditionally or subject to such conditions as [it] thinks fit to impose for determining any of the matters as respects which the undertaker has power to impose conditions under section 121 above.

(3) On an appeal under this section in respect of a condition attached to a consent, [the Authority] may take into review all the conditions attached to the consent, whether appealed against or not, and may—

(a) substitute for them any other set of conditions, whether more or less favourable to the appellant; or

(b) annul any of the conditions.

(4) [The Authority] may, under subsection (3) above, include provision as to the charges to be made in pursuance of any condition attached to a consent for any period before the determination of the appeal.

(5) On any appeal under this section, [the Authority] may give a direction that the trade effluent in question shall not be discharged until a specified date.

(6) Any consent given or conditions imposed by [the Authority] under this section in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(7) The powers of [the Authority] under this section shall be subject to the provisions of sections 123, 128, 133, 135 and 137 below.

NOTES

Derivation

Sub-s (1) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 3(1), the Water Act 1973, s 14(2), the Water Act 1989,s 69, Sch 8, paras 1, 3(2), (3); sub-ss (2)–(5) derived from the Public Health Act 1961, s 61(1)–(5), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, paras 1, 3(2); sub-s (6) derived from the Public Health Act 1961, s 66(2), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, paras 1, 3(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Words “the Authority”, “it” and “The Authority” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

123 Appeals with respect to the discharge of special category effluent

(1) Where a reference is made to [the [appropriate agency]] under section 120 above, the period mentioned in paragraph (b) of subsection (1) of section 122 above shall not begin to run for the purposes of that subsection, in relation to the application to which the reference relates, until the beginning of the day after [the [appropriate agency]] serves notice on the sewerage undertaker in question of his determination on the reference.

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(2) If, on an appeal under section 122 above, it appears to [the Authority]—

(a) that the case is one in which the sewerage undertaker in question is required to make a reference under section 120 above before giving a consent; and

(b) that the undertaker has not made such a reference, whether because the case falls within subsection (3) of that section or otherwise,

[the Authority] shall not be entitled to determine the appeal, otherwise than by upholding a refusal, except where the conditions set out in subsection (3) below are satisfied.

(3) The conditions mentioned in subsection (2) above are satisfied if [the Authority]—

(a) has [itself] referred the questions mentioned in section 120(1) above to [the [appropriate authority]]; and

(b) has been sent a copy of the notice of [the [appropriate agency's]] determination on the reference.

(4) Every reference under this section shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which the appeal and reference is made.

(5) It shall be the duty of [the Authority], on making a reference under this section, to serve a copy of the reference—

(a) on the owner or the occupier of the trade premises in question, according to whether the discharges to which the reference relates are to be by the owner or by the occupier; and

(b) on the sewerage undertaker in question.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, Sch 9, para 1(6); sub-ss (2), (3) derived from the Water Act 1989, Sch 9, para 1(3); sub-ss (4), (5) derived from the Water Act 1989, Sch 9, paras 1(4), (5), 9.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 106.

Sub-s (1): words "appropriate agency" in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 240(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-ss (2), (3), (5): words "the Authority" and "itself" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): in paras (a), (b) words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 106.

Sub-s (3): in para (a) words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 240(1), (2).

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Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): in para (b) words “appropriate agency’s” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 240(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

124 Variation of consents

(1) Subject to sections 128, 133 and 135(3) below, a sewerage undertaker may from time to time give a direction varying the conditions which have been attached to any of its consents under this Chapter to the discharge of trade effluent into a public sewer.

(2) Subject to subsections (3) and (4) and section 125 below, no direction shall be given under this section with respect to a consent under this Chapter—

(a) within two years from the date of the consent; or

(b) where a previous direction has been given under this section with respect to that consent, within two years from the date on which notice was given of that direction.

(3) Subsection (2) above shall not prevent a direction being given before the time specified in that subsection if it is given with the consent of the owner and occupier of the trade premises in question.

(4) A direction given with the consent mentioned in subsection (3) above shall not affect the time at which any subsequent direction may be given.

(5) The sewerage undertaker shall give to the owner and occupier of the trade premises to which a consent under this Chapter relates notice of any direction under this section with respect to that consent.

(6) A notice under subsection (5) above shall—

(a) include information as to the right of appeal conferred by subsection (1) of section 126 below; and

(b) state the date, being a date not less than two months after the giving of the notice, on which (subject to subsection (2) of that section) the direction is to take effect.

(7) For the purposes of this section references to the variation of conditions include references to the addition or annulment of a condition and to the attachment of a condition to a consent to which no condition was previously attached.

NOTES

Derivation

Sub-ss (1), (5) derived from the Public Health Act 1961, s 60(1), (4), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-ss (2)–(4) derived from the Public Health Act 1961, s 60(2); sub-s (6) derived from the Public Health Act 1936, s 60(4), (6); sub-s (7) derived from the Public Health Act 1961, s 60(8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

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This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

125 Variations within time limit

(1) A sewerage undertaker may give a direction under section 124 above before the time specified in subsection (2) of that section and without the consent required by subsection (3) of that section if it considers it necessary to do so in order to provide proper protection for persons likely to be affected by the discharges which could lawfully be made apart from the direction.

(2) Subject to section 134(3) below, where a sewerage undertaker gives a direction by virtue of subsection (1) above, the undertaker shall be liable to pay compensation to the owner and occupier of the trade premises to which the direction relates, unless the undertaker is of the opinion that the direction is required—

(a) in consequence of a change of circumstances which—

(i) has occurred since the beginning of the period of two years in question; and

(ii) could not reasonably have been foreseen at the beginning of that period;

and

(b) otherwise than in consequence of consents for discharges given after the beginning of that period.

(3) Where a sewerage undertaker gives a direction by virtue of subsection (1) above and is of the opinion mentioned in subsection (2) above, it shall be the duty of the undertaker to give notice of the reasons for its opinion to the owner and occupier of the premises in question.

(4) For the purposes of this section the circumstances referred to in subsection (2)(a) above may include the information available as to the discharges to which the consent in question relates or as to the interaction of those discharges with other discharges or matter.

(5) The Secretary of State may by regulations make provision as to the manner of determining the amount of any compensation payable under this section, including the factors to be taken into account in determining that amount.

NOTES

Derivation

Sub-s (1) derived from the Control of Pollution Act 1974, s 45(1), the Water Act 1989, Sch 8, para 5(3); sub-ss (2)–(4) derived from the Control of Pollution Act 1974, s 45(2), the Water Act 1989, s 69, Sch 8, para 5(3); sub-s (5) derived from the Control of Pollution Act 1974, s 45(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

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Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

126 Appeals with respect to variations of consent

(1) The owner or occupier of any trade premises may—

(a) within two months of the giving to him under subsection (5) of section 124 above of a notice of a direction under that section; or

(b) with the written permission of [the Authority], at any later time,

appeal to [the Authority] against the direction.

(2) Subject to subsection (3) below, if an appeal against a direction is brought under subsection (1) above before the date specified under section 124(6)(b) above in the notice of the direction, the direction shall not take effect until the appeal is withdrawn or finally disposed of.

(3) In so far as the direction which is the subject of an appeal relates to the making of charges payable by the occupier of any trade premises, it may take effect on any date after the giving of the notice.

(4) On an appeal under subsection (1) above with respect to a direction, [the Authority] shall have power—

(a) to annul the direction given by the sewerage undertaker; and

(b) to substitute for it any other direction, whether more or less favourable to the appellant;

and any direction given by [the Authority] may include provision as to the charges to be made for any period between the giving of the notice by the sewerage undertaker and the determination of the appeal.

(5) A person to whom notice is given in pursuance of section 125(3) above may, in accordance with regulations made by the Secretary of State, appeal to [the Authority] against the notice on the ground that compensation should be paid in consequence of the direction to which the notice relates.

(6) On an appeal under subsection (5) above [the Authority] may direct that section 125 above shall have effect as if the sewerage undertaker in question were not of the opinion to which the notice relates.

(7) Any consent given or conditions imposed by [the Authority] under this section in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(8) The powers of [the Authority] under this section shall be subject to the provisions of sections 133, 135 and 137 below.

NOTES

Derivation

Sub-ss (1)–(4) derived from the Public Health Act 1961, s 60(5)–(7), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, paras 1, 4(2), (4); sub-ss (5), (6) derived from the Control of Pollution Act 1974, s 45(4), the Water Act 1989, Sch 8, para 5(3), (4); sub-s (7) derived from the Public Health Act 1961, s 66(2), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1.

Initial Commencement

Specified date

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Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (4)–(8): words "the Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

127 Review by [the [appropriate agency]] of consents relating to special category effluent

(1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under section 132 below) for the time being authorised by virtue of a consent under this Chapter to make discharges of any special category effluent from those premises into a sewerage undertaker's public sewer, [the [appropriate agency]] may review the questions—

(a) whether the discharges authorised by the consent should be prohibited; and

(b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to subsection (3) below, [the [appropriate agency]] shall not review any question under this section unless—

(a) the consent or variation by virtue of which the discharges in question are made has not previously been the subject-matter of a review and was given or made—

(i) before 1st September 1989; or

(ii) in contravention of section 133 below;

(b) a period of more than two years has elapsed since the time, or last time, when notice of [the [appropriate agency's]] determination on any reference or review relating to that consent or the consent to which that variation relates was served under section 132 below on the owner or occupier of the trade premises in question; or

(c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under section 132 below in the consent or variation by virtue of which the discharges in question are made.

(3) Subsection (2) above shall not apply if the review is carried out—

(a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any [EU] obligation or to any international agreement to which the United Kingdom is for the time being a party; or

(b) for the protection of public health or of flora and fauna dependent on an aquatic environment.

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NOTES

Derivation

Sub-ss (1), (3) derived from the Water Act 1989, Sch 9, para 2; sub-s (2) derived from the Water Act 1989, Sch 9, paras 2(2), 9.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 107.

Section heading: words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 241(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 107.

Sub-s (1): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 241(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 107.

Sub-s (2): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 241(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): in para (b) words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 107.

Sub-s (2): in para (b) words "appropriate agency's" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 241(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): in para (a) reference to "EU" in square brackets substituted by SI 2011/1043, art 6(1)(e).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Application for variation of time for discharge

128 Application for variation of time for discharge

(1) If, after a direction has been given under any of the preceding provisions of this Chapter requiring that trade effluent shall not be discharged until a specified date, it appears to the sewerage undertaker in question that in consequence—

(a) of a failure to complete any works required in connection with the reception and disposal of

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the trade effluent; or

(b) of any other exceptional circumstances,

a later date ought to be substituted for the date so specified in the direction, the undertaker may apply to [the Authority] for such a substitution.

(2) [The Authority] shall have power, on an application under subsection (1) above, to vary the direction so as to extend the period during which the trade effluent may not be discharged until the date specified in the application or, if [it] thinks fit, any earlier date.

(3) Not less than one month before making an application under subsection (1) above a sewerage undertaker shall give notice of its intention to the owner and occupier of the trade premises from which the trade effluent is to be discharged.

(4) [The Authority], before varying a direction on an application under subsection (1) above, shall take into account any representations made to [it] by the owner or occupier of the trade premises in question.

NOTES

Derivation

This section derived from the Public Health Act 1961, s 62, the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, paras 1, 4(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (2), (4): words “the Authority”, “The Authority” and “it” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Agreements with respect the disposal etc of trade effluent

129 Agreements with respect to the disposal etc of trade effluent

(1) Subject to sections 130 and 133 below, a sewerage undertaker may enter into and carry into effect—

(a) an agreement with the owner or occupier of any trade premises within its area for the reception and disposal by the undertaker of any trade effluent produced on those premises;

(b) an agreement with the owner or occupier of any such premises under which it undertakes, on such terms as may be specified in the agreement, to remove and dispose of substances produced in the course of treating any trade effluent on or in connection with those premises.

(2) Without prejudice to the generality of subsection (1) above, an agreement such as is mentioned in paragraph (a) of that subsection may, in particular, provide—

(a) for the construction or extension by the sewerage undertaker of such works as may be

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required for the reception or disposal of the trade effluent; and

(b) for the repayment by the owner or occupier, as the case may be, of the whole or part of the expenses incurred by the undertaker in carrying out its obligations under the agreement.

(3) It is hereby declared that the power of a sewerage undertaker to enter into an agreement under this section includes a power, by that agreement, to authorise such a discharge as apart from the agreement would require a consent under this Chapter.

NOTES

Derivation

Sub-s (1) derived from the Public Health (Drainage of Trade Premises) Act 1937, ss 7(1), (2), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-s (2) derived from the Public Health Act 1936, s 90(5), the Public Health (Drainage of Trade Premises) Act 1937, ss 7(1), 14(2), the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-s (3) gives effect to Law Commission Recommendation No 2, Cmnd 1483.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

130 Reference to [the [appropriate agency]] of agreements relating to special category effluent

(1) Where a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into an agreement under section 129 above with respect to, or to any matter connected with, the reception or disposal of any special category effluent, it shall be the duty of the undertaker to refer to [the [appropriate agency]] the questions—

(a) whether the operations which would, for the purposes of or in connection with the reception or disposal of that effluent, be carried out in pursuance of the proposed agreement should be prohibited; and

(b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) It shall be the duty of a sewerage undertaker where it has made a reference under this section not to give any consent or enter into any agreement with respect to any such operations as are mentioned in subsection (1)(a) above at any time before [the [appropriate agency]] serves notice on the undertaker of his determination on the reference.

(3) Every reference under this section shall be made in writing and shall be accompanied by a copy of the proposed agreement.

(4) It shall be the duty of a sewerage undertaker, on making a reference under this section, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether it is the owner or occupier who is proposing to be a party to the agreement.

[(7) If a sewerage undertaker fails, before giving any consent or entering into any agreement with respect to any such operations as are mentioned in paragraph (a) of subsection (1) above, to refer to the [appropriate agency] any question which he is required by that subsection to refer to [the appropriate agency], the undertaker shall be guilty of an offence and liable—

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(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(8) If the [appropriate agency] becomes aware—

(a) that a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into any such agreement as is mentioned in subsection (1) above, and

(b) that the sewerage undertaker has not referred to [the appropriate agency] any question which it is required to refer to [the appropriate agency] by that subsection,

[the appropriate agency] may proceed as if the reference required by that subsection had been made.

(9) If the Environment Agency becomes aware that any consent has been given or agreement entered into with respect to any such operations as are mentioned in paragraph (a) of subsection (1) above without the sewerage undertaker in question having referred to the Environment Agency any question which he is required by that subsection to refer to the Agency, the Agency may exercise its powers of review under section 127 above or, as the case may be, section 131 below, notwithstanding anything in subsection (2) of the section in question.]

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, Sch 9, para 1(1); sub-ss (2), (3) derived from the Water Act 1989, Sch 9, para 1(4); sub-s (4) derived from the Water Act 1989, Sch 9, paras 1(5), 9; sub-ss (5), (6) derived from the Water Act 1989, Sch 9, para 5.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: words in square brackets beginning with the word “the” substituted by the Environment Act 1995, s 120, Sch 22, para 108(2).

Section heading: words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 242(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): words in square brackets beginning with the word “the” substituted by the Environment Act 1995, s 120, Sch 22, para 108(2).

Sub-s (1): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 242(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): words in square brackets beginning with the word “the” substituted by the Environment Act 1995, s 120, Sch 22, para 108(2).

Sub-s (2): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 242(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-ss (7)–(9): substituted, for sub-ss (5), (6) as originally enacted, by the Environment Act 1995, s 120, Sch 22, para 108(3).

Sub-s (7): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 242(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

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see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (7): words “the appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 242(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (8): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 242(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (8): words “the appropriate agency” in square brackets in each place they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 242(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

131 Review by [the [appropriate agency]] of agreements relating to special category effluent

(1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under section 132 below) for the time being a party to any agreement under section 129 above with respect to, or to any matter connected with, the reception or disposal of special category effluent, [the [appropriate agency]] may review the questions—

(a) whether the operations which, for the purposes of or in connection with the reception or disposal of that effluent, are carried out in pursuance of the agreement should be prohibited; and

(b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

(2) Subject to subsection (3) below, [the [appropriate agency]] shall not review any question under this section unless—

(a) the agreement by virtue of which the operations in question are carried out has not previously been the subject-matter of a review and was entered into—

(i) before 1st September 1989; or

(ii) in contravention of section 133 below;

(b) a period of more than two years has elapsed since the time, or last time, when notice of [the [appropriate agency’s]] determination on any reference or review relating to that agreement was served under section 132 below on the owner or occupier of the trade premises in question; or

(c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under section 132 below in the agreement by virtue of which the operations in question are carried out.

(3) Subsection (2) above shall not apply if the review is carried out—

(a) for the purpose of enabling Her Majesty’s Government in the United Kingdom to give effect to any [EU] obligation or to any international agreement to which the United Kingdom is for the time being a party; or

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(b) for the protection of public health or of flora and fauna dependent on an aquatic environment.

(4) References in this section to an agreement include references to an agreement as varied from time to time by a notice under section 132 below.

NOTES

Derivation

Sub-ss (1)–(3) derived from the Water Act 1989, Sch 9, paras 2, 9.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 109.

Section heading: words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 243(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 109.

Sub-s (1): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 243(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 109.

Sub-s (2): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 243(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): in para (b) words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 109.

Sub-s (2): in para (b) words "appropriate agency's" in square bracket substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 243(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): in para (a) reference to "EU" in square brackets substituted by SI 2011/1043, art 6(1)(e).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

References and reviews relating to special category effluent

132 Powers and procedure on references and reviews

(1) This section applies to—

(a) any reference to [the [appropriate agency]] under section 120, 123 or 130 above; and

(b) any review by [the [appropriate agency]] under section 127 or 131 above.

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(2) On a reference or review to which this section applies, it shall be the duty of [the [appropriate agency]], before determining the questions which are the subject-matter of the reference or review—

(a) to give an opportunity of making representations or objections to [the [appropriate agency]]—

[(ai) where the Environment Agency is the appropriate agency, to the NRBW if the discharge or proposed discharge of special category effluent is from trade premises in England;

(bi) where the NRBW is the appropriate agency, to the Environment Agency if the discharge or proposed discharge of special category effluent is from trade premises in Wales;]

(i) to the sewerage undertaker in question; and

(ii) to the following person, that is to say, the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier of those premises who is proposing to be, or is, the person making the discharges or, as the case may be, a party to the agreement;

and

(b) to consider any representations or objections which are duly made to [the [appropriate agency]] with respect to those questions by a person to whom [the [appropriate agency]] is required to give such an opportunity and which are not withdrawn.

(3) On determining any question on a reference or review to which this section applies, [the [appropriate agency]] shall serve notice on [any person consulted under subsection (2)(a)] above.

(4) A notice under this section shall state, according to what has been determined—

(a) that the discharges or operations to which, or to the proposals for which, the reference or review relates, or such of them as are specified in the notice, are to be prohibited; or

(b) that those discharges or operations, or such of them as are so specified, are to be prohibited except in so far as they are made or carried out in accordance with conditions which consist in or include conditions so specified; or

(c) that [the [appropriate agency]] has no objection to those discharges or operations and does not intend to impose any requirements as to the conditions on which they are made or carried out.

(5) Without prejudice to section 133 below, a notice under this section, in addition to containing such provision as is specified in sub-paragraph (4) above, may do one or both of the following, that is to say—

(a) vary or revoke the provisions of a previous notice with respect to the discharges or operations in question; and

(b) for the purpose of giving effect to any prohibition or other requirement contained in the notice, vary or revoke any consent under this Chapter or any agreement under section 129 above.

(6) Nothing in subsection (1) or (2) of section 121 above shall be construed as restricting the power of [the appropriate agency], by virtue of subsection (4)(b) above, to specify such conditions as [the appropriate agency] considers appropriate in a notice under this section.

(7) < . . . >

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(8) [The [appropriate agency]] shall send a copy of every notice served under this section to [the Authority].

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, Sch 9, paras 3(1), 9; sub-ss (3), (4) derived from the Water Act 1989, Sch 9, paras 3(2), 9; sub-ss (5), (8) derived from the Water Act 1989, Sch 9, para 3(3), (4); sub-s (6) derived from the Water Act 1989, Sch 9, para 4(3); sub-s (7) derived from the Water Act 1989, Sch 9, para 7.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in paras (a), (b) words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 110(2).

Sub-s (1): in paras (a), (b) words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1) Sch 2, Pt 1, paras 223, 244(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 110(2).

Sub-s (2): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): in para (a) words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 110(2).

Sub-s (2): in para (a) words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (3)(b)(i).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): para (a)(ai), (bi) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (3)(b)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): in para (b) words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 110(3).

Sub-s (2): in para (b) words "appropriate agency" in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (3)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 110(4).

Sub-s (3): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (4)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): words "any person consulted under subsection (2)(a)" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (4)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): in para (c) words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 110(4).

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Sub-s (4): in para (c) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (5).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (6): words “the appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (6).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (7): repealed by the Environment Act 1995, s 120, Sch 22, para 110(5), Sch 24.

Sub-s (8): words in square brackets beginning with the word “The” substituted by the Environment Act 1995, s 120, Sch 22, para 110(4).

Sub-s (8): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 244(1), (7).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (8): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

133 Effect of determination on reference or review

(1) Where a notice under section 132 above has been served on a sewerage undertaker, it shall be the duty—

(a) of the undertaker; and

(b) in relation to that undertaker, of [the Authority],

so to exercise the powers to which this section applies as to secure compliance with the provisions of the notice.

(2) This paragraph applies to the following powers, that is to say—

(a) in relation to a sewerage undertaker, its power to give a consent under this Chapter, any of its powers under section 121 or 124 above and any power to enter into or vary an agreement under section 129 above; and

(b) in relation to [the Authority], any of [its] powers under this Chapter.

(3) Nothing in subsection (1) or (2) of section 121 above shall be construed as restricting the power of a sewerage undertaker, for the purpose of complying with this section, to impose any condition specified in a notice under section 132 above.

[(5) A sewerage undertaker which fails to perform its duty under subsection (1) above shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(6) The [appropriate agency] may, for the purpose of securing compliance with the provisions of a notice under section 132 above, by serving notice on [any person consulted under section 132(2)(a)]

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above, vary or revoke—

(a) any consent given under this Chapter to make discharges of any special category effluent, or

(b) any agreement under section 129 above.]

NOTES

Derivation

Sub-ss (1)–(3) derived from the Water Act 1989, Sch 9, para 4; sub-s (4) derived from the Water Act 1989, Sch 9, para 5.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (2): words "the Authority" and "its" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (5), (6): substituted, for sub-s (4) as originally enacted, by the Environment Act 1995, s 120, Sch 22, para 111.

Sub-s (6): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 245(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (6): words "any person consulted under section 132(2)(a)" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 245(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

134 Compensation in respect of determinations made for the protection of public health etc

(1) Subject to subsection (2) below, [the [appropriate agency]] shall be liable to pay compensation to the relevant person in respect of any loss or damage sustained by that person as a result of any notice under section 132 above containing [the [appropriate agency's]] determination on a review which—

(a) has been carried out for the protection of public health or of flora and fauna dependent on an aquatic environment; and

(b) but for being so carried out would have been prohibited by virtue of section 127(2) or 131(2) above.

(2) [The [appropriate agency]] shall not be required to pay any compensation under this section if the determination in question is shown to have been given in consequence of—

(a) a change of circumstances which could not reasonably have been foreseen at the time when the period of two years mentioned in section 127(2) or, as the case may be, section 131(2) above began to run; or

(b) consideration by [the [appropriate agency]] of material information which was not reasonably available to [the appropriate agency] at that time.

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(3) No person shall be entitled to any compensation under section 125 above in respect of anything done in pursuance of section 133 above.

(4) In this section "the relevant person", in relation to a review, means the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier who makes the discharges to which the review relates or, as the case may be, is a party to the agreement to which it relates.

NOTES

Derivation

Sub-ss (1)–(3) derived from the Water Act 1989, Sch 9, para 6(1), (2), (4); sub-s (4) derived from the Water Act 1989, Sch 9, para 9.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 112.

Sub-s (1): words "appropriate agency" and "appropriate agency's" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 246(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): words in square brackets beginning with the word "The" substituted by the Environment Act 1995, s 120, Sch 22, para 112.

Sub-s (2): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 246(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): in para (b) words in square brackets beginning with the word "the" substituted by the Environment Act 1995, s 120, Sch 22, para 112.

Sub-s (2): in para (b) words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 246(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): in para (b) words "the appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 246(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Supplemental provisions of Chapter III

135 Restrictions on power to fix charges under Chapter III

(1) On any appeal under section 122 or 126(1) above conditions providing for the payment of charges to the sewerage undertaker in question shall not be determined by [the Authority] except in so far as no provision is in force by virtue of a charges scheme under section 143 below in respect of any such receptions, discharges, removals or disposals of effluent or substances as are of the same description as the reception, discharge, removal or disposal which is the subject-matter of the appeal.

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(2) In so far as any such conditions as are mentioned in subsection (1) above do fall to be determined by [the Authority], they shall be determined having regard to the desirability of that undertaker's—

(a) recovering the expenses of complying with its obligations in consequence of the consent or agreement to which the conditions relate; and

(b) securing a reasonable return on its capital.

(3) To the extent that subsection (1) above excludes any charges from a determination on an appeal those charges shall be fixed from time to time by a charges scheme under section 143 below but not otherwise.

NOTES

Derivation

This section derived from the Water Act 1989, Sch 8, paras 3(4), 4(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (2): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

[135A Power of the [appropriate agency] to acquire information for the purpose of its functions in relation to special category effluent]

[(1) For the purpose of the discharge of its functions under this Chapter, the [appropriate agency] may, by notice in writing served on any person, require that person to furnish such information specified in the notice as [that appropriate agency] reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.

(2) A person who—

(a) fails, without reasonable excuse, to comply with a requirement imposed under subsection (1) above, or

(b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.]

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NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Environment Act 1995, s 120, Sch 22, para 113.

Section heading: words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 247(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 247(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): words “that appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 247(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

136 Evidence from meters etc

Any meter or apparatus provided in pursuance of this Chapter in any trade premises for the purpose of measuring, recording or determining the volume, rate of discharge, nature or composition of any trade effluent discharged from those premises shall be presumed in any proceedings to register accurately, unless the contrary is shown.

NOTES

Derivation

This section derived from the Public Health Act 1961, s 67(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

137 Statement of case on appeal

(1) At any stage of the proceedings on an appeal under section 122 or 126(1) above, [the Authority] may, and if so directed by the High Court shall, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings.

(2) The decision of the High Court on a special case under this section shall be deemed to be a judgment of the Court within the meaning of section 16 of the [Senior Courts Act 1981] (which relates to the jurisdiction of the Court of Appeal); but no appeal to the Court of Appeal shall be brought by virtue of this subsection except with the leave of the High Court or of the Court of Appeal.

NOTES

Derivation

This section derived from the Public Health Act 1961, s 66(1), the Supreme Court Act 1981, Sch 5, and the Water Act 1989, Sch 8, paras 3(2), 4(2).

Initial Commencement

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Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "Senior Courts Act 1981" in square brackets substituted by the Constitutional Reform Act 2005, s 59(5), Sch 11, Pt 1, para 1(2).

Date in force: 1 October 2009: see SI 2009/1604, art 2(d).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

138 Meaning of "special category effluent"

(1) Subject to [subsections (1A) and] (2) below, trade effluent shall be special category effluent for the purposes of this Chapter if—

(a) such substances as may be prescribed under this Act are present in the effluent or are present in the effluent in prescribed concentrations; or

(b) the effluent derives from any such process as may be so prescribed or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

[(1A) If trade effluent is produced, or to be produced, by operating [any Part A installation or Part A mobile plant or otherwise carrying on any Part A activity], the operation or carrying on of which requires a permit, that effluent shall not be special category effluent for the purposes of this Chapter as from the determination date relating to the installation, plant or activity in question.

(1B) In subsection (1A)—

(a) "determination date", in relation to an installation, plant or activity, means—

(i) in the case of an installation, plant or activity in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;

(ii) in the case of an installation, plant or activity in relation to which the grant of a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal,

and in this paragraph the references to an appeal are references to an appeal under [the Environmental Permitting (England and Wales) Regulations 2010];

[(aa) the expressions "Part A activity", "Part A installation" and "Part A mobile plant" have the same meaning as in [those Regulations];]

(b) "permit" means a permit [granted under] [those Regulations].]

(2) Trade effluent shall not be special category effluent for the purposes of this Chapter if it is produced, or to be produced, in any process which is a prescribed process designated for central control as from the date which is the determination date for that process.

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(3) In subsection (2) above "determination date", in relation to a prescribed process, means—

(a) in the case of a process for which authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it;

(b) in the case of a process for which authorisation is refused, the date of refusal or, on appeal, of the affirmation of the refusal.

(4) [In subsection (2) and (3) above]—

(a) "authorisation", "enforcing authority" and "prescribed process" have the meanings given by section 1 of the Environmental Protection Act 1990; and

(b) the references to designation for central control and to an appeal are references, respectively, to designation under section 4 of that Act and to an appeal under section 15 of that Act.

(5) Without prejudice to the power in subsection (3) of section 139 below, nothing in this Chapter shall enable regulations under this section to prescribe as special category effluent any liquid or matter which is not trade effluent but falls to be treated as such for the purposes of this Chapter by virtue of an order under that section.

NOTES

Derivation

Sub-ss (1)–(4) derived from the Water Act 1989, s 74, and the Environmental Protection Act 1990, Sch 15, para 28.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "subsections (1A) and" in square brackets substituted by SI 2000/1973, reg 39, Sch 10, Pt 1, para 8(a).

Date in force: 1 August 2000: see SI 2000/1973, reg 1(1).

Sub-ss (1A), (1B): inserted by SI 2000/1973, reg 39, Sch 10, Pt 1, para 8(b).

Date in force: 1 August 2000: see SI 2000/1973, reg 1(1).

Sub-s (1A): words from "any Part A installation" to "Part A activity" in square brackets substituted by SI 2007/3538, reg 73, Sch 21, Pt 1, para 20(1), (2).

Date in force: 6 April 2008: see SI 2007/3538, reg 1(1)(b); for savings see reg 72(2), (10) thereof.

Sub-s (1B): in para (a) words "the Environmental Permitting (England and Wales) Regulations 2010" in square brackets substituted by SI 2010/675, reg 107, Sch 26, Pt 1, para 7(a).

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (1B): para (aa) inserted by SI 2007/3538, reg 73, Sch 21, Pt 1, para 20(1), (4).

Date in force: 6 April 2008: see SI 2007/3538, reg 1(1)(b); for savings see reg 72(2), (10) thereof.

Sub-s (1B): in para (aa) words "those Regulations" in square brackets substituted by SI 2010/675, reg 107, Sch 26, Pt 1, para 7(b).

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

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Sub-s (1B): in para (b) words in square brackets beginning with words “granted under the” substituted by SI 2007/3538, reg 73, Sch 21, Pt 1, para 20(1), (5).

Date in force: 6 April 2008: see SI 2007/3538, reg 1(1)(b); for savings see reg 72(2), (10) thereof.

Sub-s (1B): in para (b) words “those Regulations” in square brackets substituted by SI 2010/675, reg 107, Sch 26, Pt 1, para 7(b).

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (4): words “In subsection (2) and (3) above” in square brackets substituted by SI 2000/1973, reg 39, Sch 10, Pt 1, para 8(c).

Date in force: 1 August 2000: see SI 2000/1973, reg 1(1).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Subordinate Legislation

Trade Effluents (Prescribed Processes and Substances) Regulations 1992, SI 1992/339 (made under sub-s (1)).

139 Power to apply Chapter III to other effluents

(1) The Secretary of State may by order provide that, subject to section 138(5) above, this Chapter shall apply in relation to liquid or other matter of any description specified in the order which is discharged into public sewers as it applies in relation to trade effluent.

(2) An order applying the provisions of this Chapter in relation to liquid or other matter of any description may provide for it to so apply subject to such modifications (if any) as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of this Chapter of the expression “trade premises” as may be so specified.

(3) The Secretary of State may include in an order under this section such provisions as appear to him expedient for modifying any enactment relating to sewage as that enactment applies in relation to the discharge into sewers of any liquid or other matter to which any provisions of this Chapter are applied by an order under this section.

(4) The Secretary of State may include in an order under this section such other supplemental, incidental and transitional provision as appears to him to be expedient.

(5) The power to make an order under this section shall be exercisable by statutory instrument; and no order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

NOTES

Derivation

This section derived from the Public Health Act 1961, s 64(1)–(3), (5), and transfer of function orders SI 1965/319, SI 1970/1681.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

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Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

140 Pre-1989 Act authority for trade effluent discharges etc

Schedule 8 to this Act shall have effect (without prejudice to the provisions of the Water Consolidation (Consequential Provisions) Act 1991 or to sections 16 and 17 of the Interpretation Act 1978) for the purpose of making provision in respect of certain cases where trade effluent was discharged in accordance with provision made before the coming into force of the Water Act 1989.

NOTES

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Interpretation of Chapter III

141 Interpretation of Chapter III

(1) In this Chapter, except in so far as the context otherwise requires—

["appropriate agency" means—

(a) in relation to the discharge or proposed discharge of special category effluent to a public sewer that directly or indirectly discharges or is to discharge (other than via a storm-water overflow sewer) that effluent to any controlled waters in England, the Environment Agency;

(b) in relation to the discharge or proposed discharge of special category effluent to a public sewer that directly or indirectly discharges or is to discharge (other than via a storm-water overflow sewer) that effluent to any controlled waters in Wales, the NRBW;]

"special category effluent" has the meaning given by section 138 above;

"trade effluent"—

(a) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and

(b) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises,

but does not include domestic sewage;

"trade premises" means, subject to subsection (2) below, any premises used or intended to be used for carrying on any trade or industry.

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(2) For the purposes of this Chapter any land or premises used or intended for use (in whole or in part and whether or not for profit)—

(a) for agricultural or horticultural purposes or for the purposes of fish farming; or

(b) for scientific research or experiment,

shall be deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of "trade effluent" in subsection (1) above shall include references to agriculture, horticulture, fish farming and scientific research or experiment.

(3) Every application or consent made or given under this Chapter shall be made or given in writing.

(4) Nothing in this Chapter shall affect any right with respect to water in a river stream or watercourse, or authorise any infringement of such a right, except in so far as any such right would dispense with the requirements of this Chapter so far as they have effect by virtue of any regulations under section 138 above.

NOTES

Derivation

Sub-ss (1), (2) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 14(1), the Public Health Act 1961, ss 1(3), 63(1), the Water Act 1989, Sch 8, para 4(5); sub-s (3) derived from the Public Health Act 1936, s 283(1); sub-s (4) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 13.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): definition "appropriate agency" inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 248.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to provision made regarding radioactivity possessed by any substance or article or by any part of any premises: the Radioactive Substances Act 1993, s 40.

Part V
Financial Provisions

Chapter I
Charges

Manner of fixing charges

142 Powers of undertakers to charge

(1) Subject to the following provisions of this Chapter, the powers of every relevant undertaker shall include power—

(a) to fix charges for any services provided in the course of carrying out its functions and, in the case of a sewerage undertaker, charges to be paid in connection with the carrying out of its trade effluent functions; and

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(b) to demand and recover charges fixed under this section from any persons to whom the undertaker provides services or in relation to whom it carries out trade effluent functions.

(2) [Subject to subsections (2A), (3) and (3A)] below, the powers conferred by subsection (1) above shall be exercisable—

(a) by or in accordance with a charges scheme under section 143 below; or

(b) by or in accordance with agreements with the persons to be charged.

[(2A) Paragraph (b) of subsection (2) above shall not have effect in relation to—

(a) charges for the supply of water to a dwelling, or

(b) charges for the provision of sewerage services in respect of a dwelling,

but this subsection does not affect any agreement made before the commencement of section 3 of the Water Industry Act 1999.

(2B) In subsection (2A) above, "dwelling" has the meaning given by paragraph 1(2) of Schedule 4A to this Act.]

(3) Paragraph (b) of subsection (2) above shall have effect in relation to the exercise of powers with respect to charges in connection with the carrying out of a sewerage undertaker's trade effluent functions only in so far as provision for the fixing, demanding or recovery of such charges may be contained in an agreement entered into in accordance with section 129 above.

[(3A) The power of a sewerage undertaker to charge, by virtue of subsection (1) above, for any services provided in the course of carrying out its duty under section 101A(1) above shall be exercisable only by or in accordance with a charges scheme under section 143 below.]

(4) Except in so far as this Chapter otherwise provides, a relevant undertaker may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to the undertaker to be appropriate.

(5) The powers in relation to which this section has effect shall not be exercised so as to contravene any local statutory provision which expressly provides that no charge shall be made for a particular service.

(6) Nothing in subsections (1) to (5) above or in any charges scheme under section 143 below shall affect any power of a relevant undertaker to fix charges under any power conferred otherwise than by virtue of this Chapter.

[(6A) If an undertaker makes an agreement that falls within subsection (2)(b), it must notify the Authority of the provisions of the agreement.

(6B) The requirement in subsection (6A) is enforceable by the Authority under section 18.]

(7) References in this section to a sewerage undertaker's trade effluent functions are references to its functions under Chapter III of Part IV of this Act.

NOTES

Derivation

This section derived from the Water Act 1989, s 75.

Initial Commencement

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Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words “Subject to subsections (3) and (3A)” in italics repealed and subsequent words in square brackets substituted by the Water Industry Act 1999, s 3(1).

Date in force: 1 April 2000: see SI 1999/3440, art 3(a).

Sub-ss (2A), (2B): inserted by the Water Industry Act 1999, s 3(1).

Date in force: 1 April 2000: see SI 1999/3440, art 3(a).

Sub-s (3A): inserted by the Environment Act 1995, s 120, Sch 22, para 114(3).

Sub-ss (6A), (6B): inserted by the Water Act 2014, s 33(1), (2).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(h).

See Further

See further, in relation to the application of sub-ss (1), (4), (6) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 11(1).

143 Charges schemes

(1) A relevant undertaker may make a scheme (“a charges scheme”) which [has effect in relation to a specified period of twelve months and] does any one or more of the following, that is to say—

(a) fixes the charges to be paid for any services provided by the undertaker in the course of carrying out its functions;

(b) in the case of a sewerage undertaker, requires such charges as may be fixed by the scheme to be paid to the undertaker where, in the circumstances set out in the scheme—

(i) a notice containing an application for a consent is served on the undertaker under section 119 above;

(ii) such a consent as is necessary for the purposes of Chapter III of Part IV of this Act is given by the undertaker; or

(iii) a discharge is made in pursuance of such a consent;

and

(c) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.

(2) The persons who may be required by a charges scheme to pay any charge fixed by virtue of subsection (1)(b) above shall be the person who serves the notice, the person to whom the consent is given or, as the case may be, any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates.

(3) A charges scheme which requires the payment of charges where a discharge has been made in pursuance of such a consent as is mentioned in subsection (1)(b) above may impose—

(a) a single charge in respect of the whole period for which the consent is in force;

(b) separate charges in respect of different parts of that period; or

(c) both such a single charge and such separate charges.

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[(3A) A sewerage undertaker is under a duty to ensure that any charges scheme made by the undertaker, so far as having effect to recover the undertaker's costs of providing a sewer by virtue of its duty under section 101A(1) above, causes those costs to be borne by the undertaker's customers generally; and a sewerage undertaker's duty under this subsection 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 Authority].]

(4) A charges scheme may—

(a) make different provision for different cases, including different provision in relation to different circumstances or localities; and

(b) contain supplemental, consequential and transitional provision for the purposes of the scheme,

and such a scheme may revoke or amend a previous charges scheme.

(5) Nothing in any charges scheme shall affect—

(a) any power of a relevant undertaker [in a case not falling within section 142(2A) above] to enter into such an agreement with any person in any particular case as determines the charges to be made for the services provided to that person by the undertaker; or

(b) the power of a sewerage undertaker to enter into any agreement under section 129 above on terms that provide for the making of payments to the undertaker.

[(6) A charges scheme shall not take effect unless it has been approved by [the Authority].

(7) The Secretary of State may give guidance to [the Authority] on the exercise of his power under subsection (6) above; and [the Authority] shall have regard to that guidance in the exercise of that power.

(8) The Secretary of State shall arrange for any guidance given by him under subsection (7) above to be published in such manner as he considers appropriate.

(9) [The Authority] may not exercise [its] power under subsection (6) above for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.]

NOTES

Derivation

This section derived from the Water Act 1989, s 76.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "has effect in relation to a specified period of twelve months and" in square brackets inserted by the Water Industry Act 1999, s 4(1), (2).

Date in force: 23 December 1999: see SI 1999/3440, art 2(a).

Sub-s (3A): inserted by the Environment Act 1995, s 120, Sch 22, para 115.

Sub-ss (3A), (6), (7), (9): words "the Authority", "The Authority" and "its" in square brackets in each

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place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (5): in para (a) words "in a case not falling within section 142(2A) above" in square brackets inserted by the Water Industry Act 1999, s 3(2).

Date in force: 1 April 2000: see SI 1999/3440, art 3(a).

Sub-ss (6)–(9): inserted by the Water Industry Act 1999, s 4(1), (3).

Date in force: 23 December 1999: see SI 1999/3440, art 2(a).

See Further

See further, in relation to the application of sub-ss (1), (5), (9) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 11(2).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under sub-ss (3A), (7) and (8) are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[143A Regulations as to provisions to be included in charges schemes]

[(1) The provisions of any charges scheme under section 143 above must comply with any requirements prescribed by the Secretary of State by regulations.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may—

(a) prescribe items with respect to which a consumer is, or is not, to be liable to pay a charge;

(b) make provision as to the matters by reference to which charges may be fixed and as to methods and principles to be adopted in calculating and imposing charges;

(c) require alternative bases of charging to be made available to consumers; and

(d) require special provision, including exemption from specified charges, to be made for the purpose of assisting individuals who are or would be liable to pay any charges and who fall within any class of individuals appearing to the Secretary of State to require special provision.

(3) Regulations under this section imposing requirements for the purpose mentioned in subsection (2)(d) may—

(a) prescribe the classes of persons for whom special provision is to be made in relation to any premises by reference to matters such as age, ill-health or disability, the age, ill-health or disability of any of their dependants or of any other persons who have their homes in the premises, or their financial circumstances;

(b) make provision as to the method by which a person may establish his entitlement to assistance under the regulations; and

(c) make provision as to responsibility for costs incurred for the purpose of establishing that entitlement.

(4) The power to make regulations under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.]

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NOTES

Extent

This section does not extend to Scotland: see the Water Industry Act 1999, s 17(5)(a).

Amendment

Inserted by the Water Industry Act 1999, s 5.

Date in force (insofar as conferring power to make subordinate legislation): 30 June 1999: see the Water Industry Act 1999, s 17(2)(f).

Date in force (for remaining purposes): 23 December 1999: see SI 1999/3440, art 2(b).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water Industry (Charges) (Vulnerable Groups) Regulations 1999, SI 1999/3441.
Water Industry (Charges) (Vulnerable Groups) (Amendment) Regulations 2000, SI 2000/519.
Water Industry (Charges) (Vulnerable Groups) (Amendment) Regulations 2003, SI 2003/552.
Water Industry (Charges) (Vulnerable Groups) (Amendment) Regulations 2005, SI 2005/59.
Water Industry (Charges) (Vulnerable Groups) (Consolidation) Regulations 2015, SI 2015/365.

144 Liability of occupiers etc for charges

(1) Subject to the following provisions of this section and except in so far as provision to the contrary is made by any agreement to which the undertaker is a party—

(a) supplies of water provided by a water undertaker shall be treated for the purposes of this Chapter as services provided to the occupiers for the time being of any premises supplied; and

(b) sewerage services provided by a sewerage undertaker shall be treated for the purposes of this Chapter as provided to the occupiers for the time being of any premises which—

(i) are drained by a sewer or drain connecting, either directly or through an intermediate sewer or drain, with such a public sewer of the undertaker as is provided for foul water or surface water or both; or

(ii) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting.

(2) Subject to subsection (3) below, charges which, under the preceding provisions of this Chapter, are fixed in relation to any premises by reference to volume may be imposed so that a person is made liable in relation to those premises to pay charges for services provided by a relevant undertaker after that person has ceased to be the occupier of the premises.

(3) A person shall not be made liable by virtue of subsection (2) above for any charges fixed in relation to any premises by any relevant undertaker, except where—

(a) he fails to inform the undertaker of the ending of his occupation of the premises at least two working days before he ceases to occupy them; and

(b) the charges are in respect of a period ending no later than with the first relevant day.

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(4) For the purposes of subsection (3) above, “the first relevant day”, in relation to a case in which a person has ceased to be the occupier of any premises in relation to which charges are fixed by a relevant undertaker, means whichever of the following first occurs after he ceases to occupy the premises, that is to say—

(a) where that person informs the undertaker of the ending of his occupation of the premises less than two working days before, or at any time after, he ceases to occupy them, the twenty-eighth day after he so informs the undertaker;

(b) any day on which any meter would normally have been read in order for the amount of the charges to be determined;

(c) any day on which any other person informs the undertaker that he has become the new occupier of the premises.

(5) Where—

(a) any person who is the occupier of any premises to which a supply of water is provided by a water undertaker has served notice on the undertaker for the purposes of section 62 above; and

(b) that notice is given otherwise than in connection with that person’s ceasing to be the occupier of the premises in a case in which provision is made by virtue of subsection (2) above for a person who has ceased to be the occupier of the premises to be made liable for any charges,

then, notwithstanding that that person continues to be the occupier of those premises, he shall not be liable to the undertaker (otherwise than in pursuance of a demand for a supply made since the service of the notice) for any charges in respect of any supply of water to those premises after the appropriate time.

(6) In subsection (5) above “the appropriate time”, in relation to a case in which a notice has been served for the purposes of section 62 above, means whichever is the later of—

(a) the expiry of the notice; and

(b) the end of the period of two working days beginning with the service of the notice.

(7) In this section any reference to two working days is a reference to a period of forty-eight hours calculated after disregarding any time falling on—

(a) a Saturday or Sunday; or

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

(8) Where, in the case of any premises—

(a) the person who was liable, immediately before 1st September 1989, to pay charges in respect of a supply of water to those premises was the owner of those premises, rather than the occupier;

(b) that person was so liable (under section 54 of Schedule 3 to the Water Act 1945 or any other local statutory provision) otherwise than by virtue of an agreement; and

(c) the person who was in fact the occupier of the premises on that date has not ceased to be the occupier before the coming into force of this Act,

then the person who is the owner from time to time of those premises shall continue, until the person mentioned in paragraph (c) above does cease to be the occupier of the premises, to be the person liable

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and, accordingly, shall be treated for the purposes of this section as if he were the occupier of the premises.

NOTES

Derivation

Sub-ss (1)–(7) derived from the Water Act 1989, s 77; sub-s (8) derived from the Water Act 1989, Sch 26, para 16(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 11(3).

[General guidance on charges]

NOTES

Amendment

Inserted by the Water Act 2014, s 38.

Date in force (for certain purposes): 1 January 2015: see SI 2014/3320, art 2(1)(b); for transitional provisions see art 3.

Date in force (in relation to England for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

[144ZE General guidance on charges]

[(1) The Minister must issue guidance about the principles to be applied by the Authority in determining the provisions of—

(a) rules under section 66E;

(b) rules under section 117I;

(c) rules under section 143B.

(2) The Minister may issue guidance about the principles to be applied by the Authority in determining the provisions of—

(a) rules under section 40E;

(b) rules under section 51CD;

(c) rules issued in accordance with regulations under section 66M;

(d) rules under section 105ZF;

(e) rules under section 110F;

(f) rules under section 144ZA.

(3) Guidance under subsection (1) or (2) may include other guidance about the provisions of any of the rules mentioned in subsection (1) or (2).

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(4) The Minister may issue guidance about the principles to be applied by the Authority in determining the contents of other documents produced by the Authority about charges that may be imposed by relevant undertakers or water supply or sewerage licensees.

(5) Guidance under subsection (4) may include other guidance about the contents of the documents mentioned in subsection (4).

(6) The Authority must have regard to guidance issued under this section when making rules to which the guidance relates (as well as to any guidance relating to those rules issued under another provision of this Act).

(7) If—

(a) the Minister issues guidance under this section in respect of rules made under a particular provision, and

(b) the Authority, having regard to that guidance, considers that it is appropriate to revise rules made by it under that provision,

the Authority must issue revised rules under that provision.

(8) Before issuing guidance under this section, the Minister must—

(a) prepare a draft of the proposed guidance;

(b) consult the relevant persons about the draft;

(c) comply with the requirements of section 144ZF.

(9) The relevant persons are—

(a) the Secretary of State;

(b) the Welsh Ministers;

(c) the Council;

(d) any relevant undertakers likely to be affected by the proposed guidance;

(e) any water supply licensees or sewerage licensees likely to be affected by the proposed guidance;

(f) such other persons as the Minister thinks appropriate.

(10) The Minister may from time to time revise guidance issued under this section and issue revised guidance.

(11) Subsections (8) and (9) apply to revised guidance as they apply to the original guidance.

(12) The Minister must arrange for the publication of guidance issued under this section.

(13) In this section “the Minister” means—

(a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England;

(b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in

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Wales.]

NOTES

Amendment

Inserted by the Water Act 2014, s 38.

Date in force (for certain purposes): 1 January 2015: see SI 2014/3320, art 2(1)(b); for transitional provisions see art 3.

Date in force (in relation to England for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

[144ZF Guidance under section 144ZE: procedure]

[(1) Before issuing guidance under section 144ZE, the Secretary of State must lay a draft of the proposed guidance before both Houses of Parliament.

(2) The Secretary of State must not issue the guidance until after the period of 40 days beginning with—

(a) the day on which the draft is laid before both Houses of Parliament, or

(b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.

(3) If before the end of that period either House resolves that the guidance should not be issued, the Secretary of State may not issue it.

(4) In reckoning any period of 40 days for the purposes of subsection (2), no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued, or

(b) both Houses are adjourned for more than four days.

(5) Before issuing guidance under section 144ZE, the Welsh Ministers must lay a draft of the proposed guidance before the Assembly.

(6) The Welsh Ministers must not issue the guidance until after the period of 40 days beginning with the day on which the draft is laid before the Assembly.

(7) If before the end of that period the Assembly resolves that the guidance should not be issued, the Welsh Ministers may not issue it.

(8) In reckoning any period of 40 days for the purposes of subsection (6), no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than four days.

(9) Nothing in this section prevents the Secretary of State and the Welsh Ministers issuing a single document containing guidance under section 144ZE, and preparing draft guidance accordingly.]

NOTES

Amendment

Inserted by the Water Act 2014, s 38.

Date in force (for certain purposes): 1 January 2015: see SI 2014/3320, art 2(1)(b); for transitional provisions see art 3.

Date in force (in relation to England for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

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[Restrictions on charging]

NOTES

Amendment

Inserted by the Water Industry Act 1999, s 6.

Date in force (for certain purposes): 30 June 1999: see the Water Industry Act 1999, s 17(2)(f).

Date in force (for remaining purposes): 1 April 2000: see SI 1999/3440, art 3(b).

[144A Right of consumer to elect for charging by reference to volume]

[(1) Where—

(a) water is supplied by a water undertaker to premises in which, or in any part of which, a person has his home, and

(b) charges in respect of those premises are fixed by virtue of any charges scheme under section 143 above without reference to the volume of water supplied,

the consumer may at any time give the undertaker a notice (in this section referred to as a "measured charges notice") requiring the undertaker to fix charges in respect of the supply by reference to the volume of water supplied.

(2) Subject to subsection (3) below, a water undertaker must give effect to a measured charges notice before the end of a period determined in accordance with the undertaker's charges scheme.

(3) A water undertaker is not obliged to give effect to a measured charges notice if—

(a) it is not reasonably practicable to fix charges in respect of the premises by reference to the volume of water supplied, or

(b) to do so would involve the incurring by the undertaker of unreasonable expense.

(4) Any dispute between a water undertaker and a consumer as to the application of paragraph (a) or (b) of subsection (3) above may be referred to [the Authority] for determination under section 30A above by either party to the dispute.

(5) Where—

(a) either the conditions in subsection (6) below or the conditions in subsection (7) below are satisfied in relation to premises in respect of which a measured charges notices has been given, and

(b) such other conditions as may be prescribed are also satisfied in relation to the premises,

the consumer may, at any time before the end of the period of twelve months beginning with the day on which the supply began to be measured by volume for charging purposes, revoke the measured charges notice by notice to the water undertaker.

(6) The conditions in this subsection are—

(a) that the person who gave the measured charges notice had not given any previous measured charges notice in relation to the premises, and

(b) that he remains the consumer in respect of the premises.

(7) The conditions in this subsection are—

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(a) that the person who gave the measured charges notice has, since the notice was given, ceased to be the consumer in respect of the premises,

(b) that neither he nor the person who has become the consumer had given any previous measured charges notice in respect of the premises, and

(c) that any person who was in occupation of the premises when the measured charges notice was given remains in occupation.

(8) Where a measured charges notice has been revoked under subsection (5) above, the water undertaker must—

(a) if reasonably practicable, before the end of the period of twelve months referred to in that subsection, or

(b) in any other case, as soon as reasonably practicable after the end of that period,

revert to fixing the charges for the supply in respect of the premises without reference to the volume of water supplied.

(9) If and so long as a water undertaker is obliged under subsection (2) above to fix charges for the supply of water in respect of any premises by reference to the volume of water supplied, a sewerage undertaker is under a corresponding obligation to fix charges in respect of foul water drainage provided by the sewerage undertaker in respect of those premises by reference to that volume.

(10) If a water undertaker is obliged under subsection (8) above to fix charges without reference to volume, a sewerage undertaker is under a corresponding obligation in respect of charges for services provided by it.

(11) Any charges scheme under section 143 above—

(a) must contain provision for determining the period mentioned in subsection (2) above, and

(b) shall have effect subject to the preceding provisions of this section.]

NOTES

Extent

This section does not extend to Scotland: see the Water Industry Act 1999, s 17(5)(a).

Amendment

Inserted by the Water Industry Act 1999, s 6.

Date in force (insofar as this provision confers any power to make subordinate legislation): 30 June 1999: see the Water Industry Act 1999, s 17(2)(f).

Date in force (for remaining purposes): 1 April 2000: see SI 1999/3440, art 3(b).

Sub-s (4): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of sub-ss (5), (9), (10) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 11(4).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National

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Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water Industry (Prescribed Conditions) Regulations 1999, SI 1999/3442 (made under sub-s (5)(b)).
Water Industry (Prescribed Conditions) (Undertakers Wholly or Mainly in Wales) Regulations 2004, SI 2004/701 (made under sub-s (5)(b)).
Water Industry (Prescribed Conditions) (Amendment) Regulations 2007, SI 2007/2457 (made under sub-s (5)(b)).

[144B Restriction on undertakers' power to require fixing of charges by reference to volume]

[(1) Subsection (2) below applies where—

(a) water is supplied to any premises in which, or in any part of which, a person has his home,

(b) charges in respect of those premises have previously been fixed without reference to volume, and

(c) such conditions as may be prescribed are satisfied in relation to the premises.

(2) Where this subsection applies, a relevant undertaker may not by virtue of any charges scheme under section 143 above begin to fix the charges in respect of those premises by reference to volume unless either—

(a) the consumer—

(i) has given the undertaker a measured charges notice under section 144A above which has not been revoked under that section, or

(ii) has consented to the charges in respect of the premises being so fixed and has not revoked that consent under section 144A, or

(b) there has been a change in the occupation of the premises and no charges have yet been demanded from the person who has become the consumer.

(3) A change in the persons occupying any premises does not constitute a change in the occupation of the premises for the purposes of subsection (2)(b) above if any person who was in occupation of the premises before the change remains in occupation after the change.

(4) Where a consumer gives consent for the purposes of subsection (2)(a)(ii) above in relation to premises in which, or in any part of which, a person has his home, he shall be treated for the purposes of subsections (5) to (8) of section 144A above as having given a measured charges notice under that section.]

NOTES

Extent

This section does not extend to Scotland: see the Water Industry Act 1999, s 17(5)(a).

Amendment

Inserted by the Water Industry Act 1999, s 7.

Date in force (insofar as this provision confers any power to make subordinate legislation): 30 June 1999: see the Water Industry Act 1999, s 17(3)(f).
Date in force (for remaining purposes): 1 April 2000: see SI 1999/3440, art 3(b).

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Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water Industry (Prescribed Conditions) Regulations 1999, SI 1999/3442 (made under sub-s (1)(c)).
Water Industry (Prescribed Conditions) (Undertakers Wholly or Mainly in Wales) Regulations 2004, SI 2004/701 (made under sub-s (1)(c)).
Water Industry (Prescribed Conditions) (Amendment) Regulations 2007, SI 2007/2457 (made under sub-s (1)(c)).

[144C Non-owner occupiers]

[(1) This section applies to residential premises which are occupied by one or more persons other than the owner (and not by the owner).

(2) The owner must arrange for the undertaker to be given information about the occupiers.

(3) If the owner fails to comply with subsection (2), the occupiers' liability for charges under this Chapter becomes shared jointly and severally with the owner.

(4) The Minister may make regulations—

(a) about the information to be given under subsection (2);

(b) about timing and procedure in connection with subsection (2) or (3).

(5) The Minister may make regulations exempting owners from liability under subsection (3) where—

(a) information supplied by them is false or incomplete, but

(b) they have taken steps specified by the regulations to ensure its accuracy or completeness.

(6) "Residential premises" means premises that are—

(a) occupied by one or more persons as a home (but not necessarily as their only or main home), and

(b) a "dwelling", a "house in multiple occupation" or "accommodation for the elderly" within the meaning of paragraphs 1 to 3 of Schedule 4A.

(7) Where a person is the "owner" of premises by virtue of being agent or trustee (see section 219(1)) the duty and liability under this section attach to the principal (and not to the agent or trustee).

(8) "The Minister" means—

(a) the Secretary of State, in relation to services provided by an undertaker whose area is wholly or mainly in England, and

(b) the Welsh Ministers, in relation to services provided by an undertaker whose area is wholly or mainly in Wales (for which purpose section 213 applies with references to the Secretary of State and either House of Parliament being taken as references to the Welsh Ministers and

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the National Assembly for Wales).]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Flood and Water Management Act 2010, s 45(1); for effect see s 45(2) thereof.

Date in force (for the purpose of making regulations under sub-ss (4), (5)): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (for certain purposes): 1 January 2015: see SI 2014/3155, art 2.

Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Subordinate Legislation

Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014, SI 2014/3156 (made under sub-ss (4), (8)(b)).

General restrictions on charging

145 . . .

. . .

NOTES

Amendment

Repealed by the Water Industry Act 1999, ss 8, 15(2), Sch 4 Pt I.

Date in force: 30 June 1999: see the Water Industry Act 1999, s 17(2)(c).

146 Connection charges etc, and charges for highway drainage

(1) Subject to subsection (2) below, nothing in this Chapter or in any other enactment shall entitle any relevant undertaker to fix, demand or recover an initial charge for its becoming, or for its taking steps for the purpose of becoming—

(a) the person who provides a supply of water for domestic purposes to any premises; or

(b) the person who provides sewerage services for the purposes of the drainage for domestic sewerage purposes of any premises.

(2) Subject to subsection (3) below, nothing in subsection (1) above or in any other enactment shall be construed as prohibiting the fixing, demand or recovery by a relevant undertaker of—

(a) a charge for the connection to a water supply of premises which have never at any previous time (whether before or after the coming into force of the restriction contained in this section) been connected to a supply of water provided for domestic purposes by a water undertaker or by any other authority or body which at that time provided supplies of water in the course of carrying out functions under any enactment; or

(b) a charge for the connection to a public sewer of premises which have never at any previous time (whether before or after the coming into force of the restriction contained in this section) been connected to a sewer used for the drainage for domestic sewerage purposes of those premises by a sewerage undertaker or by any other authority or body which at that time provided sewerage services in the course of carrying out functions under any enactment.

(3) Nothing in this Chapter or in any other enactment or in the terms of any agreement under section 104 above shall authorise a sewerage undertaker to require any payment to be made to the undertaker in

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respect of the making by the undertaker of any declaration of vesting under Chapter II of Part IV of this Act or in respect of any agreement to make such a declaration.

(4) Nothing in this Chapter or in any other enactment shall authorise a sewerage undertaker to require any payment to be made to the undertaker by a highway authority in respect of the drainage of any highway or the disposal of the contents of any drain or sewer used for draining any highway.

(5) The preceding provisions of this section, so far as they restrict the making of certain charges, shall be without prejudice—

(a) to enactments by virtue of which a relevant undertaker may recover expenses incurred by it in carrying out works; and

(b) to the power of any such undertaker, by virtue of section 142(4) above, to fix the amount of any of its other charges by reference to such matters as it thinks appropriate.

(6) In this section "domestic sewerage purposes" has the same meaning as in Chapter II of Part IV of this Act.

NOTES

Derivation

This section derived from the Water Act 1989, s 79.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

147 Charging for emergency use of water

(1) Notwithstanding anything [in section 38(2) of the Fire and Rescue Services Act 2004, or anything] in section 142 above or in any charges scheme under section 143 above or in any agreement as to charges in respect of any supply of water, no charge may be made by any water undertaker in respect of—

(a) water taken for the purpose of extinguishing fires or taken by a [fire and rescue authority] for any other emergency purposes;

(b) water taken for the purpose of testing apparatus installed or equipment used for extinguishing fires or for the purpose of training persons for fire-fighting; or

(c) the availability of water for any purpose mentioned in paragraph (a) or (b) above.

(2) This section shall not prevent the making of charges in respect of work carried out at the request of or for the benefit of any person receiving a supply of water for the purposes mentioned in paragraph (a) or (b) of subsection (1) above.

(3) This section shall not have the effect, where any water is used or made available for any of the purposes mentioned in paragraph (a) or (b) of subsection (1) above, of requiring a reduction in the charges imposed in respect of the provision for other purposes of the supply from which that water is taken.

(4) . . .

NOTES

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Derivation

This section derived from the Water Act 1989, s 81.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "in section 38(2) of the Fire and Rescue Services Act 2004, or anything" in square brackets inserted by the Fire and Rescue Services Act 2004, s 53(1), Sch 1, paras 75, 77(a).

Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).

Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.

Sub-s (1): in para (a) words "fire and rescue authority" in square brackets substituted by the Fire and Rescue Services Act 2004, s 53(1), Sch 1, paras 75, 77(b).

Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).

Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.

Sub-s (4): repealed by the Fire and Rescue Services Act 2004, s 54, Sch 2.

Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).

Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.

Metering

148 Restriction on charging for metering works

(1) Subject to subsections (2) to (4) below and section 177 below, where any meter [capable of being used] in determining the amount of any charges is installed by or at the request of any relevant undertaker then, notwithstanding the provisions of any enactment or of any agreement to the contrary between the undertaker and any other person, the undertaker shall bear—

(a) the expenses of installing and connecting the meter;

(b) any expenses incurred in maintaining, repairing, disconnecting or removing the meter in accordance with any requirements of the undertaker; and

(c) any expenses incurred in carrying out any works for purposes connected with the installation and connection of the meter or with the maintenance, repair, disconnection or removal of the meter in accordance with any such requirements.

[(1A) References in subsection (1) above to expenses include references to expenses incurred in meeting the needs of a disabled person.]

(2) Subject to subsection (3) below, subsection (1) above shall not require any relevant undertaker to bear, or prevent any such undertaker from recovering from any other person—

(a) any expenses incurred for the purpose of enabling a condition imposed by virtue of subsection (2)(c) or (d) of section 47 above to be satisfied;

(b) any sums which it is entitled to recover in pursuance of any terms or conditions determined under section 56 above;

[(c) in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any sums which it is entitled to recover from that person by virtue of section 64(3)(b) above;]

[(cc) any sums which it is entitled to recover under an agreement under section 66D above;]

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(d) any expenses incurred in relation to a meter which is or is to be used in determining the amount of—

(i) any charges which are to be paid in connection with the carrying out of a sewerage undertaker's functions under Chapter III of Part IV of this Act; or

(ii) any charges provision for which is contained in an agreement entered into in accordance with section 129 above;

[(e) in the case of premises which do not consist of or include any building or part of a building which is occupied as a private dwelling-house, any expenses incurred in consequence of the exercise by the consumer of any option to be charged by the undertaker in relation to those premises by reference to volume rather than by reference to other matters].

(3) For the purposes of subsection (2) above the expenses which an undertaker may require someone else to bear, or may recover from another, by virtue of that subsection shall not include any expenses incurred for the purpose of enabling conditions such as are mentioned in paragraph (a) of that subsection to be satisfied in a case in which the conditions could not have been imposed but for the exercise by the undertaker of its power by virtue of paragraph (a), (b), (d) or (e) of section 64(2) above to require the provision of a separate service pipe to any premises.

(4) The occupier of any premises where any relevant undertaker installs or has installed a meter shall in all cases bear so much of the expenses referred to in subsection (1) above as is attributable to compliance with a request made by him in accordance with any regulations under section 149 below for the positioning, in a place other than that reasonably proposed by the undertaker, either of the meter or of any pipe or apparatus installed for the purpose of facilitating the use of the meter.

[(4A) Subsection (4) above is subject to any regulations made by virtue of section 149(2)(aa) below.]

(5) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

(a) as to whether the undertaker or that other person should bear any expenses under this section; or

(b) as to the amount of any expenses to be borne by any person under this section,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by [the Authority].

NOTES

Derivation

This section derived from the Water Act 1989, Sch 10, para 2(1)–(3), (5), 5.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1A), (4A): inserted by the Competition and Service (Utilities) Act 1992, s 53(2), (3).

Sub-s (1): words "capable of being used" in square brackets substituted by the Water Industry Act 1999, s 15(1), Sch 3, para 1.

Date in force: 1 April 2000: see SI 1999/3440, art 3(d).

Sub-s (2): para (c) substituted by the Water Industry Act 1999, s 9(a).

Date in force: 1 April 2000: see SI 1999/3440, art 3(c).

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Sub-s (2): para (cc) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 33.
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (2): para (e) substituted by the Water Industry Act 1999, s 9(b).
Date in force: 1 April 2000: see SI 1999/3440, art 3(c).
Sub-s (5): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).
Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

149 Further provision relating to charging by volume

(1) The Secretary of State may by regulations make such provision, supplementing—

(a) the provisions of this Chapter; and

(b) so far as they relate to works for purposes connected with the fixing of charges in relation to any premises by reference to volume, the provisions of Part VI of this Act,

as he considers appropriate with respect to the installation of meters, with respect to the connection, disconnection, use, maintenance, authentication and testing of meters and with respect to any related matters.

(2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may—

(a) regulate the positioning, whether inside or outside the building or other premises [to which the meter relates], of any meter or of any pipes or apparatus appearing to any relevant undertaker to be required for the purpose of facilitating the use of any meter;

[(aa) require a relevant undertaker who, for the purpose of meeting the needs of a disabled person—

(i) alters the position of any meter;

(ii) installs an additional meter; or

(iii) does any other work in connection with any meter,

to bear any expenses incurred by the undertaker in doing so;]

(b) make any other provision which appears to the Secretary of State to be appropriate with respect to any such pipes or apparatus;

(c) provide for a reading from a meter to be proved in such manner as may be prescribed and for a reading from a meter to be such evidence as may be prescribed of the volume of water supplied to, or of effluent discharged from, any premises;

(d) fix the method of determining the amount of the charges to be paid where it appears that a meter has given, or may have given, an incorrect reading;

(e) require a person who is not a relevant undertaker to pay the expenses incurred by such an undertaker in doing anything under the regulations or to pay contributions towards those expenses;

(f) provide for the payment of compensation in respect of anything done by a relevant undertaker under the regulations;

(g) require disputes arising under the regulations to be referred to arbitration;

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(h) repeal or amend any local statutory provision.

NOTES

Derivation

This section derived from the Water Act 1989, s 78(2), (3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): in para (a) words "to which the meter relates" in square brackets substituted by the Water Industry Act 1999, s 15(1), Sch 3, para 2.

Date in force: 1 April 2000: see SI 1999/3440, art 3(d).

Sub-s (2): para (aa) inserted by the Competition and Service (Utilities) Act 1992, s 53(4).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Charging for services provided with the help of an undertaker

150 Fixing maximum charges for services provided with the help of undertakers' services

(1) [The Authority] may from time to time by order fix maximum charges which a person who is not a relevant undertaker may recover from another such person in respect of water supplies or sewerage services provided to that other person with the help of services provided by a relevant undertaker.

[(1A) This section does not apply to water supplies provided by a licensed water supplier to premises of customers in accordance with Chapter 1A of Part 2 of this Act.]

(2) For the purposes of this section water supplies or sewerage services are provided to a person with the help of services provided by a relevant undertaker if—

(a) a facility for that person to have access to a supply of water provided by a water undertaker in pipes, or to make use of sewerage services provided by a sewerage undertaker, is made available to that person otherwise than by the undertaker;

(b) that person is provided with a supply of water in pipes by a person to whom the water is supplied, directly or indirectly, by a water undertaker; or

(c) that person is provided with sewerage services by a person who, for the purpose of providing those services, makes use of sewerage services provided, directly or indirectly, by a sewerage undertaker.

[(2A) An order under this section may require the person providing the supplies or services to furnish the person who is provided with them with such information as may be specified or described in the order.

(2B) An order containing such a requirement may also provide that, in the event of the failure of the person providing the supplies or services to furnish that information, the maximum charges he is entitled

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to recover from the person provided with them in respect of those supplies or services shall be such as may be fixed by the order.]

(3) It shall be the duty of [the Authority] to publish any order under this section in such manner as [it] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

(4) An order under this section may make different provision for different cases, including different provision in relation to different persons, circumstances or localities, and may fix a maximum charge either by specifying the maximum amount of the charge or by specifying a method of calculating that amount.

(5) Where a person pays a charge in respect of anything to which an order under this section relates and the amount paid exceeds the maximum charge fixed by the order,

[(a) the amount of the excess; and

(b) if the order so provides, interest on that amount at a rate specified or described in the order,

shall be recoverable by that person from the person to whom he paid the charge].

NOTES

Derivation

This section derived from the Water Act 1989, s 82.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (3): words “The Authority”, “the Authority” and “it” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 34.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-ss (2A), (2B): inserted by the Water Act 2003, s 59(1), (2).

Date in force: 1 October 2004: see SI 2004/2528, art 2(i).

Sub-s (5): paras (a), (b) and words “shall be recoverable by that person from the person to whom he paid the charge” immediately following them substituted by the Water Act 2003, s 59(1), (3).

Date in force: 1 October 2004: see SI 2004/2528, art 2(i).

[150A Billing disputes]

[(1) The Secretary of State may by regulations make provision for billing disputes to be referred to [the Authority] for determination in accordance with the regulations.

(2) In this section “billing dispute” means a dispute between a relevant undertaker and a customer concerning the amount of the charge which the undertaker is entitled to recover from the customer in connection with—

(a) the supply of water for domestic purposes, in the case of a water undertaker; and

(b) the provision of sewerage services other than by the carrying out of trade effluent functions, in the case of a sewerage undertaker.

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(3) Regulations under this section may only be made after consulting—

(a) [the Authority]; and

(b) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations.

(4) Regulations under this section may provide that, where a billing dispute is referred to [the Authority], [it] may either—

(a) determine the dispute, or

(b) appoint an arbitrator to determine it.

(5) Any person determining any billing dispute in accordance with regulations under this section shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.

(6) Regulations under this section may provide—

(a) that disputes may be referred to [the Authority] under this section only by prescribed persons; and

(b) for any determination to be final and enforceable as if it were a judgment of [the county court].

(7) Except in such circumstances (if any) as may be prescribed—

(a) [the Authority] or an arbitrator appointed by [it] shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court; and

(b) neither party to any billing dispute which has been referred to [the Authority] for determination in accordance with regulations under this section shall commence proceedings before any court in respect of that dispute pending its determination in accordance with the regulations.

(8) No relevant undertaker may commence proceedings before any court in respect of any charge in connection with the supply of water for domestic purposes or (as the case may be) the provision of sewerage services other than by the carrying out of trade effluent functions unless, not less than 28 days before doing so, the customer concerned was informed by it, in such form and manner as may be prescribed, of—

(a) its intention to commence proceedings;

(b) the customer's rights by virtue of this section; and

(c) such other matters (if any) as may be prescribed.

(9) Where a dispute is referred to [the Authority] in accordance with regulations made under this section, it shall be the duty of the undertaker concerned to give [it] such information as [it] may reasonably require for the purpose of assisting [it] in determining the dispute.

(10) Section 202 below shall have effect, with the necessary modifications, in relation to information which [the Authority] requires for that purpose as it has effect in relation to information which the Secretary of State requires for purposes mentioned in subsection (1) of that section.

(11) For the purposes of this section—

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"charge" means any charge fixed by a scheme made under section 143 above;

"customer" means any person to whom the relevant undertaker provides services;

and references to a sewerage undertaker's trade effluent functions are references to its functions under Chapter III of Part IV of this Act.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Prospectively inserted by the Competition and Service (Utilities) Act 1992, s 36, as from a day to be appointed.

Sub-ss (1), (3), (4), (6), (7), (9), (10): words "the Authority" and "it" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): in para (b) words "the county court" in square brackets substituted by the Crime and Courts Act 2013, s 17(5), Sch 9, Pt 3, para 52(1)(b), (2).

Date in force: 22 April 2014: see SI 2014/954, art 2(a), (c); for transitional provision see art 3.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[Interpretation of Chapter I]

NOTES

Amendment

Inserted by the Water Industry Act 1999, s 15(1), Sch 3, para 3.

Date in force: 1 April 2000: see SI 1999/3440, art 3(d).

[150B Meaning of "consumer" in Chapter I]

[In this Chapter "consumer"—

(a) in relation to the supply of water by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall, and

(b) in relation to the provision of sewerage services in respect of any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of those services would fall.]

NOTES

Extent

This section does not extend to Scotland: see the Water Industry Act 1999, s 17(5)(a).

Amendment

Inserted by the Water Industry Act 1999, s 15(1), Sch 3, para 3.

Date in force: 1 April 2000: see SI 1999/3440, art 3(d).

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See Further

See further, in relation to the application of para (a) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 11(5).

Chapter II
Financial Assistance for Undertakers

151 . . .

. . .

NOTES

Amendment

Repealed with savings by the Environment Act 1995, s 120(1)–(3), Sch 22, para 116, Sch 23, Pt I, para 19, Sch 24.

152 Grants for national security purposes

(1) The Secretary of State may, out of money provided by Parliament, make grants to relevant undertakers [and licensed water suppliers] for the purpose of defraying or contributing towards any losses they may sustain by reason of compliance with directions given under section 208 below in the interests of national security.

(2) The approval of the Treasury shall be required for the making of grants under this section.

NOTES

Derivation

This section derived from the Water Act 1989, s 170(7), (9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words “and licensed water suppliers” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 35.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions under sub-s (1) above shall be exercisable by the National Assembly for Wales concurrently with the Secretary of State in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales, and shall be so exercisable free from the Treasury approval requirement under sub-s (2) above.

153 Government financial assistance where special administration orders made

(1) Where a special administration order is for the time being in force in relation to a company, the Secretary of State, may, with the consent of the Treasury—

(a) make to the company grants or loans of such sums as appear to him to be appropriate for the purpose of facilitating the achievement of the purposes of the order;

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[(b) offer indemnities in respect of liabilities or loss incurred or sustained in the course of functions under the order].

[(1A) An indemnity under subsection (1)(b) may be offered to—

(a) the special administrator,

(b) an employee of the special administrator,

(c) a member or employee of a firm of which the special administrator is or was a member or employee (or a successor of that firm),

(d) a body corporate of which the special administrator is or was an employee, or

(e) an officer, employee or member of a body corporate within paragraph (d).]

(2) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which is borrowed from any person by a company in relation to which a special administration order is in force at the time when the guarantee is given.

(3) Without prejudice to any provision applied in relation to the company [by or under section 23]—

(a) the terms and conditions on which a grant is made to any company under this section may require the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms and conditions on which the grant is made; and

(b) any loans which the Secretary of State makes to a company under this section shall be repaid to him at such times and by such methods, and interest on the loans shall be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct.

[(3A) Arrangements for a grant, loan or indemnity which are made while a special administration order is in force may continue to have effect after the order ceases to have effect.]

(4) Any grant or loan made under this section and any sums required to be paid by the Secretary of State in respect of an indemnity given under this section shall be paid out of money provided by Parliament.

(5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the Consolidated Fund.

NOTES

Derivation

This section derived from the Water Act 1989, s 25(1)–(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): para (b) substituted by the Flood and Water Management Act 2010, s 34, Sch 5, para 4(1), (2).

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for effect see the Flood and Water

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Management Act 2010, s 34, Sch 5, para 4(9).

Sub-s (1A): inserted by the Flood and Water Management Act 2010, s 34, Sch 5, para 4(1), (3). Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for effect see the Flood and Water Management Act 2010, s 34, Sch 5, para 4(9).

Sub-s (3): words "by or under section 23" in square brackets substituted by the Flood and Water Management Act 2010, s 34, Sch 5, para 4(1), (4). Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for effect see the Flood and Water Management Act 2010, s 34, Sch 5, para 4(9).

Sub-s (3A): inserted by the Flood and Water Management Act 2010, s 34, Sch 5, para 4(1), (5). Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for effect see the Flood and Water Management Act 2010, s 34, Sch 5, para 4(9).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

154 Guarantees under section 153

(1) This section applies in relation to any guarantee given by the Secretary of State under section 153 above.

(2) [As soon as is reasonably practicable] after a guarantee to which this section applies is given, the Secretary of State shall lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is paid out for fulfilling a guarantee to which this section applies, the Secretary of State shall, as soon as [is reasonably practicable] after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of the interest thereon is finally discharged), lay before each House of Parliament a statement relating to that sum.

(4) Any sums required by the Secretary of State for fulfilling a guarantee to which this section applies shall be paid out of money provided by Parliament.

(5) Without prejudice to any provision applied in relation to the relevant company [by or under section 23], if any sums are paid out in fulfilment of a guarantee to which this section applies, the relevant company shall make to the Secretary of State, at such times and in such manner as the Secretary of State may from time to time direct—

(a) payments of such amounts as the Secretary of State may so direct in or towards repayment of the sums so paid out; and

(b) payments of interest, at such rate as the Secretary of State may so direct, on what is outstanding for the time being in respect of sums so paid out;

and the consent of the Treasury shall be required for the giving of a direction under this subsection.

(6) Any sums received by the Secretary of State under subsection (5) above shall be paid into the Consolidated Fund.

(7) In subsection (5) above "the relevant company" in relation to a guarantee, means the company which borrowed the sums in respect of which the guarantee was given.

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NOTES

Derivation

This section derived from the Water Act 1989, s 184.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words "As soon as is reasonably practicable" in square brackets substituted by the Flood and Water Management Act 2010, s 34, Sch 5, para 4(1), (6).

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for effect see the Flood and Water Management Act 2010, s 34, Sch 5, para 4(9).

Sub-s (3): words "is reasonably practicable" in square brackets substituted by the Flood and Water Management Act 2010, s 34, Sch 5, para 4(1), (7).

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for effect see the Flood and Water Management Act 2010, s 34, Sch 5, para 4(9).

Sub-s (5): words "by or under section 23" in square brackets substituted by the Flood and Water Management Act 2010, s 34, Sch 5, para 4(1), (8).

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for effect see the Flood and Water Management Act 2010, s 34, Sch 5, para 4(9).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[154A Financial assistance to reduce charges]

[(1) If the Secretary of State considers it desirable to do so, the Secretary of State may give financial assistance for the purpose in subsection (2) to—

(a) an English undertaker, or

(b) a licensed water supplier that supplies water to premises in accordance with its retail authorisation using the supply system of an English undertaker

.

(2) The purpose is that of securing the reduction of charges payable by customers in an English undertaker's area for the supply of water or the provision of sewerage services.

(3) The power in subsection (1) may be exercised in relation to all customers in an English undertaker's area or customers of a particular description.

(4) Financial assistance under subsection (1) may be given in any form and in particular may be given by way of—

(a) grant,

(b) loan, or

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(c) guarantee.

(5) Financial assistance under subsection (1) may be given on such terms and conditions as the Secretary of State considers appropriate.

(6) Financial assistance under subsection (1) may be given in any manner and in particular may be given—

(a) to an English undertaker by means of an arrangement made by the Secretary of State with another English undertaker, or

(b) to a licensed water supplier by means of an arrangement made by the Secretary of State with an English undertaker that is a water undertaker

.

(7) A reference in this section to a customer in an English undertaker's area is a reference to—

(a) a person liable to pay charges to the undertaker in respect of the supply of water or the provision of sewerage services, other than a licensed water supplier, or

(b) a person whose premises are supplied with water by a licensed water supplier in accordance with its retail authorisation using the undertaker's supply system

.

(8) In this section a reference to the retail authorisation of a licensed water supplier is to be construed in accordance with section 17A(2).

(9) In this section "English undertaker" means a water undertaker or sewerage undertaker whose area is wholly or mainly in England.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Industry (Financial Assistance) Act 2012, s 1.

Date in force: 1 July 2012: see the Water Industry (Financial Assistance) Act 2012, s 3(2).

[154B Financial assistance for major works]

[(1) If the Secretary of State considers it desirable to do so, the Secretary of State may give financial assistance in connection with—

(a) the construction of water or sewerage infrastructure, or

(b) the carrying out of works in respect of existing water or sewerage infrastructure.

(2) Financial assistance may be given under subsection (1) only if constructing the infrastructure in question or carrying out the works in question, or doing a combination of those things, involves exceptionally large or complex works.

(3) Financial assistance may be given under subsection (1) only if the use or intended use of the infrastructure includes use by an English undertaker in carrying out a duty under section 37 or 94.

(4) The power under subsection (1) includes power to give financial assistance or further financial

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assistance for the purposes described in subsection (1) after completion of the infrastructure or the works in question.

(5) Financial assistance under subsection (1) may be given in any form and in particular may be given by way of—

(a) grant,

(b) loan,

(c) guarantee or indemnity,

(d) the provision of insurance, or

(e) the acquisition of shares in or securities of a body corporate.

(6) Financial assistance under subsection (1) may be given on such terms and conditions as the Secretary of State considers appropriate.

(7) In this section—

"English undertaker" means a water undertaker or sewerage undertaker whose area is wholly or mainly in England;

"sewerage infrastructure" means infrastructure relating to the provision of a system of sewers or the provision of means for emptying, or dealing effectually with the contents of, sewers;

"water infrastructure" means infrastructure relating to the provision of a system of water supply or the securing of supplies of water.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Industry (Financial Assistance) Act 2012, s 2.
Date in force: 1 July 2012: see the Water Industry (Financial Assistance) Act 2012, s 3(2).

Part VI
Undertakers' Powers and Works

Chapter I
Undertakers' Powers

Powers in relation to land

155 Compulsory purchase

(1) A relevant undertaker may be authorised by the Secretary of State to purchase compulsorily any land anywhere in England and Wales which is required by the undertaker for the purposes of, or in connection with, the carrying out of its functions.

(2) The power of the Secretary of State under subsection (1) above shall include power—

(a) to authorise the acquisition of interests in and rights over land by the creation of new interests and rights; and

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(b) by authorising the acquisition by a relevant undertaker of any rights over land which is to be or has been acquired by that undertaker, to provide for the extinguishment of those rights.

(3) Without prejudice to the generality of subsection (1) above, the land which a relevant undertaker may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.

(4) Subject to section 188 below, the Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by a relevant undertaker; and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.

(5) Schedule 9 to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.

(6) The provisions of Part 1 of the Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10, 21, 27(1) and 31 and Schedule 4, shall apply in relation to any power to acquire land by agreement which is conferred (whether by virtue of the [articles] of the company for the time being carrying out the functions of the undertaker or any enactment or otherwise) on a relevant undertaker, as if—

(a) any reference in those provisions to the acquiring authority were a reference to that undertaker; and

(b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.

NOTES

Derivation

This section derived from the Water Act 1989, s 151.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (6): word “articles” in square brackets substituted by SI 2009/1941, art 2(1), Sch 1, para 126(1), (2).

Date in force: 1 October 2009: see SI 2009/1941, art 1(2).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under this section shall be transferred to the National Assembly for Wales as follows: (a) functions so far as relating to matters concerning the construction or enlargement of reservoirs are transferred to the Assembly in relation to Wales; (b) functions so far as relating to matters other than the construction or enlargement of reservoirs are transferred to the Assembly in relation to such parts of Wales as are outside the catchment areas of the rivers Dee, Wye and Severn; (c) functions so far as relating to matters other than the construction or enlargement of reservoirs shall, in relation to such parts of Wales as are within the catchment areas of the rivers Dee, Wye and Severn, be exercisable by the Assembly concurrently with the Secretary of State.

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156 Restriction on disposals of land

(1) A company holding an appointment under Chapter I of Part II of this Act shall not dispose of any of its protected land, or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, the Secretary of State.

(2) A consent or authorisation for the purposes of this section—

(a) shall be set out in a notice served by the Secretary of State on the company which is or may be authorised, by virtue of the provision contained in the notice, to dispose of land or of interests or rights in or over land or, as the case may be, on every such company; and

(b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 157 of the Water Resources Act 1991.

(3) A consent or authorisation for the purposes of this section may be given on such conditions as the Secretary of State considers appropriate.

(4) Without prejudice to the generality of subsection (3) above and subject to subsection (5) below, the conditions of a consent or authorisation for the purposes of this section may include—

(a) a requirement that, before there is any disposal, an opportunity of acquiring the land in question, or an interest or right in or over that land, is to be made available, in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation, to such person as may be so specified or determined;

(b) a requirement that the company making the disposal has complied with such of the conditions of its appointment under Chapter I of Part II of this Act as relate to the disposal of its protected land or of any interest or right in or over that land;

(c) a requirement that the company, before making a disposal in a case in which the land in question is situated in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest, should do one or both of the following, that is to say—

[(i) consult with Natural England (as respects land in England) or [the NRBW] (as respects land in Wales); and

(ii) enter into such management agreements or such covenants under subsection (6) below as the Secretary of State may determine;]

(d) provision requiring determinations under or for the purposes of the consent or authorisation to be made, in such cases as are mentioned in paragraph (c) above, either by [Natural England] or [the NRBW] or only after consultation with [Natural England or the Countryside Council for Wales].

(5) A consent or authorisation shall not be given on any such condition as is mentioned in subsection (4)(a) above except where the Secretary of State is satisfied that the condition will have effect in relation only to—

(a) land which, or any interest in or right over which, was acquired by the relevant undertaker in question, or any predecessor of that undertaker, either compulsorily or at a time when the undertaker or that predecessor was authorised to acquire it compulsorily; or

(b) land situated in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest.

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(6) Where a company holding an appointment under Chapter I of Part II of this Act is proposing, in such a case as is mentioned in subsection (4)(c) above, to dispose of, or of any interest or right in or over, any of its protected land, it may enter into a covenant with the Secretary of State by virtue of which it accepts obligations with respect to—

(a) the freedom of access to the land that is to be afforded to members of the public or to persons of any description; or

(b) the use or management of the land;

and a covenant under this subsection shall bind all persons deriving title from or under that company and shall be enforceable by the Secretary of State accordingly.

(7) Section 3 above shall have effect for the purposes of this section as if every proposal which—

(a) is made by a company holding an appointment as a relevant undertaker with respect to land in a National Park, in the Broads or in an area of outstanding natural beauty or special scientific interest, or with respect to any interest or right in or over any such land; and

(b) is a proposal for which the Secretary of State's consent or authorisation is required under this section,

were a proposal relating to the functions of such an undertaker.

(8) In this section—

"area of outstanding natural beauty or special scientific interest" means an area which—

(a) is for the time being designated as an area of outstanding natural beauty [under section 82 of the Countryside and Rights of Way Act 2000]; or

[(b) is a site of special scientific interest within the meaning of the Wildlife and Countryside Act 1981;]

and the reference in subsection (4)(c) above to an area of special scientific interest shall, accordingly, be construed as a reference to an area such as is mentioned in paragraph (b) of this definition; . . .

"the Broads" has the same meaning as in the Norfolk and Suffolk Broads Act 1988;

["management agreement" means—

(a) in relation to land in England, an agreement under section 39 of the Wildlife and Countryside Act 1981 or section 7 of the Natural Environment and Rural Communities Act 2006;

(b) in relation to land in Wales, an agreement under section 39 of the Wildlife and Countryside Act 1981].

NOTES

Derivation

Sub-ss (1)–(3), (5)–(8) derived from the Water Act 1989, s 152(2)–(4), (6)–(8), (10); sub-s (4) derived from the Water Act 1989, s 152(5), and the Environmental Protection Act 1990, Sch 8, para 8, Sch 9, para 17(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

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Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (4): para (c)(i), (ii) substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 131(1), (2).

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (4): in para (c)(i) words "the NRBW" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 249.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): in para (d) words "Natural England" in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 131(1), (3)(a).

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (4): in para (d) words "the NRBW" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 249.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): in para (d) words "Natural England or the Countryside Council for Wales" in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 131(1), (3)(b).

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (8): in definition "area of outstanding natural beauty or special scientific interest" in para (a) words "under section 82 of the Countryside and Rights of Way Act 2000" in square brackets substituted by the Countryside and Rights of Way Act 2000, s 93, Sch 15, Pt I, para 12.

Date in force (in relation to England): 1 April 2001: see SI 2001/114, art 2(2)(e).

Date in force (in relation to Wales): 1 May 2001: see SI 2001/1410, art 2(g).

Sub-s (8): in definition "area of outstanding natural beauty or special scientific interest" para (b) substituted by the Countryside and Rights of Way Act 2000, s 76(1), Sch 10, Pt II, para 9.

Date in force: 30 January 2001: see the Countryside and Rights of Way Act 2000, s 103(2).

Sub-s (8): in definition "area of outstanding natural beauty or special scientific interest" word omitted repealed by the Natural Environment and Rural Communities Act 2006, s 105, Sch 11, Pt 1, para 131(1), (4), Sch 12.

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (8): definition "management agreement" inserted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 131(1), (4).

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

157 Byelaws with respect to undertakers' waterways and land

(1) Every relevant undertaker shall have power to make such byelaws as are mentioned in subsection (2) below with respect to any waterway owned or managed by that body and with respect to any land held or managed with the waterway.

(2) The byelaws referred to in subsection (1) above in relation to any waterway or to any land held or managed with any such waterway are byelaws for any of the following purposes, that is to say—

(a) the preservation of order on or in any such waterway or land;

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(b) the prevention of damage to anything on or in any such waterway or land or to any such land;

(c) securing that persons resorting to any such waterway or land so behave as to avoid undue interference with the enjoyment of the waterway or land by others.

(3) Without prejudice to the generality of any of the paragraphs of subsection (2) above, the byelaws mentioned in that subsection include byelaws—

(a) regulating sailing, boating, bathing and fishing and other forms of recreation;

(b) prohibiting the use of the waterway in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the undertaker making the byelaws;

(c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution;

(d) providing for a contravention of the byelaws to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws; and

(e) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.

(4) Schedule 10 to this Act shall have effect with respect to byelaws under this section.

(5) Byelaws made under this section shall cease to have effect at the end of the period of ten years beginning with the day on which they were made; but the Secretary of State may by order made by statutory instrument make provision in relation to any particular byelaws for those byelaws to continue to have effect for such period after the time when they would otherwise cease to have effect as may be specified in the order.

(6) In this section—

"boat" includes a vessel of any description, and "boating" shall be construed accordingly;

"waterway" has the same meaning as in the National Parks and Access to the Countryside Act 1949.

NOTES

Derivation

Sub-ss (1)–(3), (5), (6) derived from the Water Act 1989, s 158(1), (3), (4), (5), (6); sub-s (4) derived from the Water Act 1989, s 186.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Pipe-laying

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158 Powers to lay pipes in streets

(1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to lay a relevant pipe in, under or over any street and to keep that pipe there;

(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and

(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—

(i) breaking up or opening a street;

(ii) tunnelling or boring under a street;

(iii) breaking up or opening a sewer, drain or tunnel;

(iv) moving or removing earth and other materials.

(2) Without prejudice to the generality of subsection (1)(c) above, every water undertaker shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.

(3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.

(4) A stopcock fitted to any service pipe in a street shall be situated as near as reasonably practicable to the boundary of the street; and a water undertaker shall consult with the highway authority concerned before determining in accordance with this subsection where to fit a stopcock in a highway.

(5) Where a water undertaker exercises its powers under this section for the purpose of carrying out works of maintenance, repair or renewal in relation to a service pipe belonging to a person other than the undertaker, the undertaker shall be entitled to recover from the occupier of the premises supplied by means of that pipe the expenses reasonably incurred by that undertaker in so exercising that power.

(6) Until the coming into force of its repeal by the New Roads and Street Works Act 1991 section 20 of the Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any relevant pipe which is conferred by this section.

(7) Subject to section 161(7) below, in this section references to a relevant pipe shall be construed—

(a) in relation to a water undertaker, as references to a water main (including a trunk main [but not including a pipe laid in pursuance of section 66B(3)(a)(ii) above which is used for the purpose of supplying water other than for domestic or food production purposes or laid in pursuance of section 66B(3)(a)(iii) above]), resource main, discharge pipe or service pipe; and

[(b) in relation to a sewerage undertaker, as references to—

(i) any sewer or disposal main; . . .

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(ii) in relation to the exercise of a power to lay a pipe under paragraph (a) of subsection (1) above or a power related to that power under paragraph (c) of that subsection, any lateral drain which the undertaker is to lay by virtue of section 98 or 101B above; . . .

(iii) in relation to the exercise of any other power under subsection (1) above, any lateral drain which belongs to or is vested for the time being in the undertaker][; or

(iv) any pipe forming part of, or required in connection with, a drainage system constructed under section 114A].

[(8) Subsections (9) and (11) below apply where—

(a) an appointment or variation has been made under section 7 above replacing a company as a relevant undertaker,

(b) the appointment or variation relates only to parts of the area to which the company's appointment as relevant undertaker related, and

(c) the conditions mentioned in subsection (5) of that section were required to be satisfied in relation to each of the premises in those parts served by that company.

[(9) Where the company which has replaced the relevant undertaker has done so as water undertaker, in the application of this section and section 159 below in relation to that company any pipe supplying, or intended to supply, any of the premises referred to in subsection (8)(c) above with a supply of water which exceeds, or is likely to exceed, in any period of twelve months—

(a) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;

(b) in all other cases, [50 megalitres],

shall, for the purposes of subsection (7) above, be deemed to be a water main.]

(10) Where the Secretary of State makes regulations under section 7(6) above amending section 7(5)(a) above he shall by regulations make the corresponding amendment in subsection (9) above.

(11) Where the company which has replaced the relevant undertaker has done so as sewerage undertaker, in the application of this section and section 159 below in relation to that company any pipe draining, or intended to drain, any of those premises shall, for the purposes of subsection (7) above, be deemed to be a sewer.]

NOTES

Derivation

Sub-ss (1), (4)–(6) derived from the Water Act 1989, Sch 19, para 2(1), (3), (7), (8); sub-ss (2), (3) derived from the Water Act 1989, Sch 19, para 2(2); sub-s (7) derived from the Water Act 1989, Sch 19, para 1(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (7): in para (a) words from "but not including" to "section 66B(3)(a)(iii) above" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 36.

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Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (7): para (b) substituted by the Water Act 2003, s 97(1), (4).
Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (7): in para (b)(i), (ii) word omitted repealed by the Water Act 2014, s 21(2)(a).
Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(d).

Sub-s (7): para (b)(iv) and word "; or" immediately preceding it inserted by the Water Act 2014, s 21(2)(b).
Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(d).

Sub-s (9): substituted by SI 2000/1842, reg 2(1), (3).
Date in force: 17 August 2000: see SI 2000/1842, reg 1.

Sub-ss (8)–(11): inserted by the Competition and Service (Utilities) Act 1992, s 40(6).

Sub-s (9): in para (b) words "50 megalitres" in square brackets substituted by SI 2005/268, reg 2(1), (3).
Date in force: 1 April 2005: see SI 2005/268, reg 1.

See Further

See further, in relation to the application of sub-ss (1), (7) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 12(1).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e) and the National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044, art 4, Sch 2) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Subordinate Legislation

Water and Sewerage Undertakers (Inset Appointments) Regulations 2000, SI 2000/1842 (made under sub-s (10)).

Water and Sewerage Undertakers (Inset Appointments) Regulations 2005, SI 2005/268 (made under sub-s (10)).

159 Power to lay pipes in other land

(1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;

(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;

(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.

(2) Nothing in subsection (1) above shall authorise a water undertaker to lay a service pipe in, on or over any land except where—

(a) there is already a service pipe where that pipe is to be laid; or

(b) the undertaker is required to lay the pipe in, on or over that land by virtue of any of

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subsections (3) to (5) of section 46 above.

(3) The power conferred by virtue of paragraph (b) of subsection (1) above, and the power conferred in relation to that paragraph by virtue of paragraph (c) of that subsection shall be exercisable in relation to a service pipe irrespective of the person to whom the pipe belongs; but expenses incurred in exercising those powers in relation to any pipe shall be recoverable from the person to whom the pipe belongs only if and to the extent that that person has agreed to pay them.

(4) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.

(5) Subject to subsection (6) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (4) above shall be deemed—

(a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and

(b) where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.

(6) Subsection (5) above shall not apply in the case of any notice given with respect to the exercise of any power in an emergency or for the purpose of—

(a) laying or altering a service pipe; or

(b) complying with a duty imposed under section 41 or 98 above.

(7) Subject to subsection (2) above, in this section "relevant pipe" has the same meaning as in section 158 above [(reading references there to subsection (1) as references to subsection (1) of this section)].

NOTES

Derivation

Sub-ss (1)–(6) derived from the Water Act 1989, Sch 19, para 4; sub-s (7) derived from the Water Act 1989, Sch 19, para 1(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (7): words "(reading references there to subsection (1) as references to subsection (1) of this section)" in square brackets inserted by the Water Act 2003, s 97(1), (5).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

See Further

See further, in relation to the application of sub-s (1) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 12(2).

Other works powers

160 Power to carry out works for sewerage purposes

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(1) A sewerage undertaker may, by agreement with the owner or occupier of any premises, carry out at that person's expense—

(a) any work in connection with the construction, laying, alteration or repair of a sewer or drain which that person is entitled to carry out; or

(b) any work which the undertaker has required that person to carry out under Part IV of this Act;

and for that purpose the undertaker shall have all such rights as that person would have.

(2) Sections 291, 293 and 294 of the Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, s 275, the Water Act 1945, Sch 4, the Water Act 1973, s 14(2), the Water Act 1989, s 69, Sch 8, para 1; sub-s (2) derived from the Public Health Act 1936, ss 291, 293, 294.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

161 Power to deal with foul water and pollution

(1) Subject to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and

(b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above, including for those purposes the following kinds of works, that is to say—

(i) breaking up or opening a street;

(ii) tunnelling or boring under a street;

(iii) breaking up or opening a sewer, drain or tunnel;

(iv) moving or removing earth and other materials;

and the provisions of section 158 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(2) Subject to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and

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(b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above;

and the provisions of section 159 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(3) Without prejudice to the powers conferred by subsections (1) and (2) above but subject to the provisions of Chapter III of this Part, every water undertaker shall have power, on any land which belongs to that undertaker or over or in which that undertaker has acquired the necessary easements or rights, to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose—

(a) of intercepting, treating or disposing of any foul water arising or flowing upon that land; or

(b) of otherwise preventing the pollution—

(i) of any waters, whether on the surface or underground, which belong to [the Environment Agency] [or the NRBW] or any water undertaker or from which [the Environment Agency] [or the NRBW] or any water undertaker is authorised to take water;

(ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by [the Environment Agency] [or the NRBW] or any water undertaker or which [the Environment Agency] [or the NRBW] or any water undertaker is proposing to acquire or construct for the purpose of being so operated; or

(iii) of any underground strata from which [the Environment Agency] [or the NRBW] or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the Water Resources Act 1991.

(4) Where any water undertaker is proposing to carry out any such works as are mentioned in subsection (3) above and the proposed works will affect any watercourse, the undertaker shall consult [the Environment Agency][, where the proposed works will affect any watercourse in England, and the NRBW, where the proposed works will affect any watercourse in Wales,] before carrying out the works.

(5) Without prejudice to the protective provisions of Chapter III of this Part, nothing in subsection (3) above shall authorise any water undertaker, without the consent of the navigation authority in question, to intercept or take any water which a navigation authority are authorised to take or use for the purposes of their undertaking.

(6) Any dispute as to whether any consent for the purposes of subsection (5) above is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) In section 158 above the references to the laying of a relevant pipe shall include references—

(a) to the laying of any drain or sewer for any of the purposes mentioned in subsection (3)(a) and (b) above; and

(b) to the construction of a watercourse for any of those purposes.

(8) In this section—

"the protective provisions of Chapter III of this Part" means the provisions of sections 183 to 191 below;

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"relevant waterworks" means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises; and

"waterworks" includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, Sch 19, paras 2(1), 4(1); sub-ss (3)–(7) derived from the Water Act 1989, s 154; sub-s (8) derived from the Water Act 1989, Sch 19, para 1(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): in para (b)(i)–(iii) words "the Environment Agency" in square brackets in each place they occur substituted by the Environment Act 1995, s 120, Sch 22, para 117.

Sub-s (3): in para (b)(i)–(iii) words "or the NRBW" in square brackets in each place they occur inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 250(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): words "the Environment Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 117.

Sub-s (4): words from ", where the proposed" to "watercourse in Wales," in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 250(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to the application of sub-ss (1), (2) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 12(3).

162 Works in connection with metering

(1) Subject to the following provisions of this section, to section 148 above and to the provisions of Chapter III of this Part, where—

[(a) subsection (1A) below applies to a relevant undertaker in respect of any premises; and]

(b) there is either—

(i) a service pipe which is connected with a water undertaker's water main and by which a supply of water is or could be provided to those premises or to any building in which those premises are contained; or

(ii) a drain or private sewer which connects those premises with a public sewer,

the undertaker shall have power, in accordance with section 172 below or otherwise, to carry out any works specified in subsection (3) below.

[(1A) This subsection applies to a relevant undertaker in respect of any premises if—

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(a) the undertaker has fixed any charges in relation to any premises by reference to volume, [or]

(b) the undertaker is entitled so to fix any charges because the person who is the consumer in relation to the premises for the purposes of Chapter I of Part V of this Act has exercised his right to give—

(i) a measured charges notice under section 144A above, or

(ii) any consent for the purposes of section 144B(2)(a)(ii) above,

and has not revoked the measured charges notice or consent under section 144A, or

(c) the undertaker has given notice of its intention of so fixing any charges—

(i) within the period specified in the notice, or

(ii) in a case where it is not for the time being entitled so to fix the charges, if and when it becomes entitled to do so[, or

(d) a licensed water supplier supplies water to those premises using the undertaker's supply system]

.]

[(1B) In subsection (1A)(d) above, the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.]

(2) The power under subsection (1) above to carry out works specified in subsection (3) below shall include power to carry out any such works in a street; and the power conferred by virtue of subsection (1)(c) of section 158 above and subsection (6) of that section shall apply in relation to the power conferred by this subsection as they apply in relation to the powers conferred by that section.

(3) The works mentioned in subsections (1) and (2) above are, in relation to any premises—

(a) works consisting in the installation and connection of any meter for use in determining the amount of any charges which have been or may be fixed in relation to the premises;

(b) where the premises comprise a house which is one of two or more houses to which the supply of water is wholly or partly by the same service pipe, works consisting in the installation and connection, for any purpose connected with the installation or connection of such a meter, of a separate service pipe for that house;

(c) works for the purpose of maintaining, repairing, disconnecting or removing—

(i) any meter which has been installed for use in determining the amount of any charges which have been or may be fixed in relation to the premises; or

(ii) any pipes or apparatus installed in the course of any works specified in this section;

and

(d) any other works appearing to the undertaker to be necessary or expedient for any purpose connected with the carrying out of any works specified in paragraph (a), (b) or (c) above, including the installation and connection of any pipes or other apparatus on the premises and the alteration or removal of any of the plumbing of the premises.

(4) A notice given for the purposes of [subsection (1A)(c)] above may relate to particular premises or

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to any description of premises and shall be given—

(a) by publishing the notice in the locality in which the premises to which it relates are situated in such a manner as the undertaker considers appropriate for bringing it to the attention of the persons likely to be affected by it; and

(b) by serving a copy of the notice on the Secretary of State.

(5) Subject to subsection (6) below, any works carried out by a water undertaker by virtue of the provisions of this section shall be necessary works for the purposes of Chapter II of Part III of this Act.

(6) Nothing in this section shall prevent the exercise by a water undertaker of its power by virtue of subsection (3)(b) of section 64 above to impose a condition by virtue of subsection (2)(c) or (d) of section 47 above in a case where it has, under the said section 64, required the provision of a separate service pipe to any premises.

(7) Part II of Schedule 6 to this Act shall apply to the powers conferred by this section.

(8) Any dispute between a relevant undertaker and any other person (including another such undertaker) as to the exercise of any power under this section to carry out any works on any premises shall be referred to the arbitration of a single arbitrator appointed—

(a) by agreement between the undertaker and that person; or

(b) in default of agreement, by [the Authority].

(9) Without prejudice to subsection (2) above, nothing in section 158, 159 or 161 above shall authorise the installation of any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises where that apparatus is to be used for the purpose only of determining the amount of any charges fixed, or to be fixed, in relation to those premises wholly or partly by reference to the volume of that water or effluent.

NOTES

Derivation

Sub-ss (1)–(4) derived from the Water Act 1989, Sch 10, para 1(1)–(3), (5); sub-ss (5), (6) derived from the Water Act 1989, Sch 10, para 1(7); sub-s (8) derived from the Water Act 1989, Sch 10, para 5; sub-s (9) derived from the Water Act 1989, Sch 19, para 1(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): para (a) substituted by the Water Industry Act 1999, s 10(1), (2).
Date in force: 1 April 2000: see SI 1999/3440, art 3(c).
Sub-s (1A): inserted by the Water Industry Act 1999, s 10(1), (3).
Date in force: 1 April 2000: see SI 1999/3440, art 3(c).
Sub-s (1A): in para (a) word “or” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 37(1), (2).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (1A): para (d) and word “, or” immediately preceding it inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 37(1), (3).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (1B): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 37(1), (4).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

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Sub-s (4): words “subsection (1A)(c)” in square brackets substituted by the Water Industry Act 1999, s 10(1), (4).

Date in force: 1 April 2000: see SI 1999/3440, art 3(c).

Sub-s (8): in para (b) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

163 Power to fit stopcocks

(1) Subject to subsection (2) below and without prejudice to section 159 above, a water undertaker shall have power, at its own expense, to fit a stopcock to any service pipe by which a supply of water is or is to be provided to any premises by the undertaker [or a licensed water supplier], whether that pipe belongs to the undertaker or to any other person.

(2) A stopcock fitted in private premises by a water undertaker to any service pipe shall be situated as near as practicable to any street from which that pipe enters those premises.

NOTES

Derivation

This section derived from the Water Act 1989, Sch 19, para 5.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words “or a licensed water supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 38.

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

164 Agreements for works with respect to water sources

(1) A water undertaker may enter into agreements under this section with the owners and occupiers of any land, or with a local authority, with respect to the carrying out and maintenance by any party to the agreement of such works as the undertaker considers necessary—

(a) for the purpose of draining that land; or

(b) for more effectually collecting, conveying or preserving the purity of any water which the undertaker is for the time being authorised to take.

(2) Before entering into an agreement under this section with respect to the carrying out of works the carrying out of which would result in the discharge of any water into a watercourse otherwise than through public sewers, a water undertaker shall consult[—

(a) the Environment Agency, if the proposed works will affect any watercourse in England,

(b) the NRBW, if the proposed works will affect any watercourse in Wales, and

(c) if the watercourse] is subject to the jurisdiction of a navigation authority, that authority.

(3) An agreement under this section with the owner of any land which is expressed to be binding on and enforceable against the owner’s successors in title to that land—

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(a) may be registered under section 2 of the Land Charges Act 1972 as an obligation affecting land falling within Class D; and

(b) shall be so binding and enforceable unless it is void by reason of a failure so to register it.

(4) In this section the reference to a local authority includes a reference to a county council and to the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple; and any expenses incurred by the Common Council of the City of London in the exercise of their functions under this section shall be defrayed as part of their general expenses.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1945, s 15(1), the Water Act 1973, Sch 8, para 49, and the Water Act 1989, Sch 25, para 7(2); sub-s (3) derived from the Water Act 1945, s 15(2), and the Land Charges Act 1972, s 18(6); sub-s (4) derived from the Water Act 1945, ss 53, 59(1), and the London Government Act 1963, Sch 11, Part I, para 27.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words from "— (a) the Environment Agency" to "if the watercourse" in square brackets substituted by the Water Act 2014, s 56, Sch 7, paras 2, 107.

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(t).

Powers to discharge water

165 Discharges for works purposes

(1) Subject to the following provisions of this section and to section 166 below, where any water undertaker—

(a) is exercising or about to exercise any power conferred by section 158, 159, 161 or 163 above (other than the power conferred by section 161(3) above); or

(b) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole, or other work belonging to or used by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions,

the undertaker may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.

(2) Nothing in this section shall authorise any discharge which—

(a) damages or injuriously affects the works or property of any railway undertakers or navigation authority; or

(b) floods or damages any highway.

(3) If any water undertaker fails to take all necessary steps to secure that any water discharged by it under this section is as free as may be reasonably practicable from—

(a) mud and silt;

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(b) solid, polluting, offensive or injurious substances; and

(c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,

the undertaker shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(4) In this section "relevant pipe" means any water main (including a trunk main), resource main, discharge pipe or service pipe.

NOTES

Derivation

Sub-ss (1), (3) derived from the Water Act 1989, Sch 19, para 8(1), (5); sub-s (2) derived from the Water Act 1989, Sch 19, para 8(6); sub-s (4) derived from the Water Act 1989, Sch 19, para 1(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

166 Consents for certain discharges under section 165

(1) Except in an emergency, no discharge through any pipe the diameter of which exceeds two hundred and twenty-nine millimetres shall be made under section 165 above except with the consent of [the appropriate agency] and of any navigation authority which carries out functions in relation to—

(a) the part of the watercourse where the discharge is made; or

(b) any part of that watercourse which is less than three miles downstream from the place of the discharge.

(2) Where a water undertaker makes an application to any authority for a consent for the purposes of this section—

(a) that application shall be accompanied or supplemented by all such information as that authority may reasonably require; and

(b) the undertaker shall serve a copy of the application, and of any consent given on that application, on every person who—

(i) is registered with the undertaker in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and

(ii) has not agreed in writing that he need not be served with such a copy;

but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(3) Subject to subsection (4) below, an application for a consent for the purposes of this section shall be determined—

(a) in the case of an application with respect to a particular discharge, before the end of the period of seven days beginning with the day after the application is made; and

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(b) in any other case, before the end of the period of three months beginning with that day;

and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

(4) Where—

(a) an undertaker which has made an application to any authority for a consent for the purposes of this section has failed to comply with its obligation under subsection (2)(a) above to supplement that application with information required by that authority; and

(b) that requirement was made by that authority at such a time before the end of the period within which that authority is required to determine the application as gave the undertaker a reasonable opportunity to provide the required information within that period,

that authority may delay his determination of the application until a reasonable time after the required information is provided.

(5) A consent for the purposes of this section may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the person giving it; but a consent for those purposes shall not be unreasonably withheld.

(6) Any dispute as to whether a consent for the purposes of this section should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(7) Where any discharge under section 165 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the undertaker which made the discharge shall, as soon as practicable after making the discharge, serve a notice which—

(a) states that the discharge has been made; and

(b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,

on every person on whom that undertaker would have been required to serve the application for that consent or any copy of that application.

(8) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this section or any condition of a consent given for the purposes of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(9) Nothing in this section shall require any consent to be obtained, or any notice to be served, in respect of any discharge if the requirements of section 34 of the Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.

[(10) In this section “the appropriate agency” means—

(a) the Environment Agency, in relation to discharges of water in England;

(b) the NRBW, in relation to discharges of water in Wales.]

NOTES

Derivation

Sub-ss (1), (3), (5)–(8) derived from the Water Act 1989, Sch 19, para 9(1), (4)–(8); sub-ss (2), (4)

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derived from the Water Act 1989, s 176, Sch 19, para 9(3); sub-s (9) derived from the Water Act 1989, Sch 26, para 43(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "the appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 251(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (10): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 251(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Compulsory works orders

167 Compulsory works orders

(1) Where a water undertaker [. . .] is proposing, for the purposes of, or in connection with, the carrying out of any of its functions [. . .]—

(a) to carry out any engineering or building operations; or

(b) to discharge water into any inland waters or underground strata,

the undertaker may apply to the Secretary of State for an order under this section ("a compulsory works order").

(2) Subject to the following provisions of this section, the Secretary of State may, on an application under subsection (1) above, by order made by statutory instrument—

(a) confer such compulsory powers; and

(b) grant such authority,

as he considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.

[(2A) The Secretary of State may not exercise the power under subsection (2) in respect of anything to be done in England.]

(3) Schedule 11 to this Act shall have effect with respect to applications for compulsory works orders and with respect to such orders.

(4) Subject to the provisions of Schedule 11 to this Act, a compulsory works order may—

(a) without prejudice to section 155 above, confer power to acquire compulsorily any land, including—

(i) power to acquire interests in and rights over land by the creation of new rights and interests; and

(ii) power, by the compulsory acquisition by any water undertaker of any

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rights over land which is to be or has been acquired by that undertaker, to extinguish any such rights;

(b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part of this Act which do not apply for those purposes apart from by virtue of this paragraph;

(c) make any authority granted by the order subject to such conditions as may be specified in the order;

(d) amend or repeal any local statutory provision;

(e) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

(5) Without prejudice to any duty imposed by virtue of section 191 below, where—

(a) the Secretary of State makes a compulsory works order authorising a water undertaker to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on such an undertaker; and

(b) it appears to him that the works to be carried out may permanently affect the area in which they are situated and are not primarily intended to benefit the inhabitants of that area,

he may include in the order provision with respect to facilities for recreation or other leisure-time occupation for the benefit of those inhabitants.

(6) Nothing in any compulsory works order shall exempt any water undertaker from any restriction imposed by Chapter II of Part II of the Water Resources Act 1991 (abstraction and impounding of water).

(7) It is hereby declared that a compulsory works order may grant authority for discharges of water by a water undertaker where the undertaker has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.

(8) In this section the reference to the relevant provisions of this Part is a reference to the provisions of this Part except sections 172 and 173, the provisions of Chapter II and any provision of this Part which is one of the relevant sewerage provisions.

NOTES

Derivation

Sub-ss (1)–(4), (6), (7) derived from the Water Act 1989, s 155(1)–(6); sub-s (5) derived from the Water Act 1989, s 157(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): first words omitted in square brackets inserted by the Planning Act 2008, s 36, Sch 2, para 50(a).

Date in force: 1 March 2010: see SI 2010/101, art 2; for savings see art 6 thereof.

Sub-s (1): first words omitted repealed by virtue of the Flood and Water Management Act 2010, s 41(1).

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Date in force: 1 October 2010: see SI 2010/2169, art 4, Schedule.

Sub-s (1): second words omitted in square brackets inserted by the Planning Act 2008, s 36, Sch 2, para 50(b).

Date in force: 1 March 2010: see SI 2010/101, art 2; for savings see art 6 thereof.

Sub-s (1): second words omitted repealed by virtue of the Flood and Water Management Act 2010, s 41(1).

Date in force: 1 October 2010: see SI 2010/2169, art 4, Schedule.

Sub-s (2A): inserted by the Flood and Water Management Act 2010, s 41(2); for effect see s 41(3) thereof.

Date in force: 1 October 2010: see SI 2010/2169, art 4, Schedule.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under this section shall be transferred to the National Assembly for Wales as follows: (a) functions so far as relating to matters concerning the construction or enlargement of reservoirs are transferred to the Assembly in relation to Wales; (b) functions so far as relating to matters other than the construction or enlargement of reservoirs are transferred to the Assembly in relation to such parts of Wales as are outside the catchment areas of the rivers Dee, Wye and Severn; (c) functions so far as relating to matters other than the construction or enlargement of reservoirs shall, in relation to such parts of Wales as are within the catchment areas of the rivers Dee, Wye and Severn, be exercisable by the Assembly concurrently with the Secretary of State.

Entry to land etc by water undertakers

168 Entry for works purposes

(1) Any person designated in writing for the purpose by a relevant undertaker may enter any premises for any of the purposes specified in subsection (2) below.

(2) The purposes mentioned in subsection (1) above are—

(a) the carrying out of any survey or tests for the purpose of determining—

(i) whether it is appropriate and practicable for the undertaker to exercise any relevant works power; or

(ii) how any such power should be exercised;

or

(b) the exercise of any such power.

(3) The power, by virtue of subsection (1) above, of a person designated by a relevant undertaker to enter any premises for the purposes of carrying out any survey or tests shall include power—

(a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and

(b) to take away and analyse such samples of water or effluent or of any land or articles as the undertaker—

(i) considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above; and

(ii) has authorised that person to take away and analyse.

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(4) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.

(5) In this section "relevant works power" means any power conferred by any of the provisions of sections 158, 159, 161, 163 and 165 above, other than section 161(3).

NOTES

Derivation

Sub-ss (1)–(3) derived from the Water Act 1989, Sch 19, para 10(1)–(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

169 Power to carry out surveys and to search for water

(1) Without prejudice to the rights and powers conferred by section 168 above, any person designated in writing under this section by a water undertaker may enter any premises for any of the purposes specified in subsection (2) below.

(2) The purposes mentioned in subsection (1) above are the carrying out of any survey or tests for the purpose of determining—

(a) whether it would be appropriate for the undertaker to acquire any land, or any interest or right in or over land, for purposes connected with the carrying out of its functions; or

(b) whether it would be appropriate for the undertaker to apply for a compulsory works order under section 167 above and what compulsory powers it would be appropriate to apply for under that section.

(3) The power by virtue of subsection (1) above of a person designated under this section to enter any premises for the purpose of carrying out any survey or tests shall include power—

(a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;

(b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in subsection (2) above may be made; and

(c) to take away and analyse such samples of water or of any land or articles as the undertaker considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.

(4) The powers conferred by this section shall not be exercised in any case for purposes connected with the determination of—

(a) whether, where or how a reservoir should be constructed; or

(b) whether, where or how a borehole should be sunk for the purpose of abstracting water from or discharging water into any underground strata,

unless the Secretary of State has, in accordance with subsection (5) below, given his written authorisation in relation to that case for the exercise of those powers for those purposes.

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(5) The Secretary of State shall not give his authorisation for the purposes of subsection (4) above unless—

(a) he is satisfied that notice of the proposal to apply for the authorisation has been given to the owner and to the occupier of the premises in question; and

(b) he has considered any representations or objections with respect to the proposed exercise of the powers under this section which—

(i) have been duly made to him by the owner or occupier of those premises, within the period of fourteen days beginning with the day after the giving of the notice; and

(ii) have not been withdrawn.

(6) Part II of Schedule 6 to this Act shall apply to the rights and powers conferred by this section.

NOTES

Derivation

Sub-ss (1)–(5) derived from the Water Act 1989, s 156(1)–(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under sub-ss (4) and (5) above shall be transferred to the National Assembly for Wales as follows: (a) functions so far as relating to matters concerning the construction or enlargement of reservoirs are transferred to the Assembly in relation to Wales; (b) functions so far as relating to matters other than the construction or enlargement of reservoirs are transferred to the Assembly in relation to such parts of Wales as are outside the catchment areas of the rivers Dee, Wye and Severn; (c) functions so far as relating to matters other than the construction or enlargement of reservoirs shall, in relation to such parts of Wales as are within the catchment areas of the rivers Dee, Wye and Severn, be exercisable by the Assembly concurrently with the Secretary of State.

170 Entry etc for other purposes

(1) Any person designated in writing for the purpose by a water undertaker may enter any premises for any of the following purposes, that is to say—

(a) the carrying out of any survey or tests for the purpose of determining—

(i) whether it is appropriate and practicable for the undertaker to exercise any power under any provision of Part III of this Act to disconnect any pipe or cut off any supply of water to any premises or to carry out any works which it is authorised to carry out under section 64(4), 66(3) or 75 above; or

(ii) how any such power should be exercised;

(b) the exercise of any such power;

(c) the monitoring and recording of—

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(i) whether water supplied to any premises for domestic or food production purposes is wholesome at the time of supply; or

(ii) the quality of the water from any source, or combination of sources, which is or is to be used for supplying water to any premises for those purposes,

and the carrying out of any tests for that purpose.

(2) Any person designated for the purpose—

(a) by any water undertaker within whose area any waterworks are situated; or

(b) by any water undertaker which takes water from any waterworks,

shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of ascertaining whether there is, or has been, any contravention of section 72 above in relation to those waterworks.

(3) Any person designated in writing for the purpose by a water undertaker may—

(a) enter any premises for the purpose of—

(i) ascertaining whether any provision contained in or made or having effect under this Act with respect to any water fittings or with respect to the waste or misuse of water is being, or has been, contravened;

(ii) determining whether, and if so in what manner, any power or duty conferred or imposed on any person by regulations under section 74 above should be exercised or performed; or

(iii) exercising any such power or performing any such duty;

or

(b) carry out such inspections, measurements and tests on premises entered by that person or on water fittings or other articles found on any such premises, and take away such samples of water or of any land and such water fittings and other articles, as that person has been authorised to carry out or take away in accordance with regulations under that section.

(4) During any period when a prohibition or restriction under section 76 above is in force, any person designated for the purpose by the water undertaker which imposed the prohibition or restriction shall, on producing some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises to which the prohibition or restriction applies for the purpose of ascertaining whether there is, or has been, any contravention of the prohibition or restriction.

(5) The power by virtue of subsection (1) above of a person designated by a water undertaker to enter any premises for the purpose of carrying out any survey or tests shall include power to take away such samples of water or effluent or of any land or articles as the undertaker—

(a) considers necessary for the purpose of determining any of the matters mentioned in paragraph (a) or (c) of that subsection; and

(b) has authorised that person to carry out or take away.

(6) Expressions used in this section and in any provision of Part III of this Act in relation to which this section has effect shall have the same meaning in this section as in that provision; and, without prejudice to the generality of this provision, subsections (2) and (3) of section 68 above and the definitions of “food

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production purposes" and "wholesome" in section 93(1) above shall apply for the purposes of any power conferred by virtue of subsection (1)(c)(i) above as they apply for the purposes of that section.

(7) Part I of Schedule 6 to this Act shall apply to the rights of entry conferred by subsections (2) and (4) of this section; and Part II of that Schedule shall apply to the rights and powers conferred by the other provisions of this section.

(8) The provisions of this section shall be without prejudice to the other rights and powers conferred by this Part.

NOTES

Derivation

Sub-ss (1), (8) derived from the Water Act 1989, s 64(1), (2), and the Food Safety Act 1990, s 55(2); sub-s (2) derived from the Water Act 1945, s 21(2), and the Water Act 1989, s 190, Sch 25, para 7(4)(b); sub-s (3) derived from the Water Act 1989, s 62(4); sub-s (4) derived from the Water Act 1945, s 16(5), and the Water Act 1948, s 6, the Water Act 1989, Sch 25, para 7(3); sub-ss (5), (6) derived from the Water Act 1989, s 64(3), (5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

171 Entry for sewerage purposes

(1) Any person designated in writing for the purpose by a sewerage undertaker shall, on producing any duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

(a) for the purpose of ascertaining whether there is or has been, on or in connection with the premises, any contravention of any of the relevant sewerage provisions which it is the function of the undertaker to enforce;

(b) for the purpose of ascertaining whether or not circumstances exist which would authorise or require the undertaker to take any action or carry out any works under any of the relevant sewerage provisions;

(c) for the purpose of taking action or carrying out any works authorised by or under any of the relevant sewerage provisions to be taken or carried out by the undertaker;

(d) generally for the purpose of carrying out the undertaker's functions under the relevant sewerage provisions.

(2) Part I of Schedule 6 to this Act shall apply to the right of entry conferred by subsection (1) above.

(3) Any person designated by a sewerage undertaker under subsection (1) above for the purpose of exercising any power under this section for the purposes of Chapter III of Part IV of this Act may, on any occasion on which he so exercises that power in relation to any premises, obtain and take away any sample of any trade effluent which is passing (either directly or through [a drain or private sewer]) from those premises into any of the undertaker's public sewers.

(4), (5) . . .

(6) In this section "trade effluent" and "trade premises" have the same meanings as in Chapter III of Part IV of this Act; and, accordingly, section 139 above shall have effect for the purposes of this section

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as it has effect for the purposes of that Chapter.

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, s 287(1), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, paras 1, 2(9), Sch 9, para 7; sub-s (3) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 10(1), the Water Act 1973, s 14(2), the Control of Pollution 1974, Sch 3, para 10, the Water Act 1989, Sch 8, paras 1, 2(9), 3(7), Sch 9, para 7; sub-ss (4), (5) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 10(2), the Water Act 1989, Sch 8, paras 1, 2(9), 3(7), Sch 9, para 7.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): words “a drain or private sewer” in square brackets substituted by the Water Act 2003, s 97(1), (6).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-ss (4), (5): repealed by the Environment Act 1995, ss 111(1), 120, Sch 24.

172 Entry for metering purposes

(1) Where the conditions set out in section 162(1) above are satisfied in relation to any premises, any person designated in writing for the purpose by the relevant undertaker in question may enter those premises, or any land occupied with those premises, for any of the purposes specified in subsection (2) below.

(2) The purposes mentioned in subsection (1) above are—

(a) the carrying out of any survey or tests for the purpose of determining—

(i) whether the carrying out of any works by virtue of paragraph (a) or (b) of subsection (3) of section 162 above is practicable;

(ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those paragraphs for any other works to be carried out; or

(iii) how any works specified in that subsection should be carried out;

(b) the carrying out of any works so specified;

(c) the inspection, examination or testing of any meter which is on those premises or of any pipes or apparatus installed in the course of any works which were carried out for any purpose that is connected with the installation, connection, testing, maintenance or repair of any such meter;

(d) the ascertainment from any meter of the volume of water supplied to, or of effluent discharged from, those premises.

(3) Part II of Schedule 6 to this Act shall apply in relation to the rights and powers conferred by the preceding provisions of this section.

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(4) Where any meter or other recording apparatus is provided in any premises in pursuance of Chapter III of Part IV of this Act for the purpose of assessing any charge, a sewerage undertaker may (instead of exercising its powers under this section) for the purpose of reading that meter or apparatus exercise the power conferred by section 171 above as if that purpose were included in the purposes mentioned in subsection (1) of that section.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, Sch 10, para 1(1), (4); sub-s (4) derived from the Public Health Act 1961, s 67(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

173 Impersonation of persons entitled to entry

(1) A person who, without having been designated or authorised for the purpose by a relevant undertaker, purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist or would not be exercisable even if that person had been designated or authorised by a relevant undertaker.

NOTES

Derivation

This section derived from the Water Act 1989, s 180.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Chapter II
Protection of Undertakers' Works, Apparatus etc

Protection of apparatus in general

174 Offences of interference with works etc

(1) Subject to subsection (2) below, if any person without the consent of the water undertaker—

(a) intentionally or recklessly interferes with any resource main, water main or other pipe vested in any water undertaker or with any structure, installation or apparatus belonging to any water undertaker; or

(b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

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that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

[(1A) Subject to subsection (2) below, if any person without the consent of the licensed water supplier—

(a) intentionally or recklessly interferes with any pipe or any structure, installation or apparatus which—

(i) is vested in any licensed water supplier (in the case of a pipe) or belongs to any such supplier (in any other case); and

(ii) is used in connection with the carrying on by the supplier of the activities authorised by its licence; or

(b) by any act or omission negligently interferes with any such pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,

that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.]

(2) A person shall not be guilty of an offence under subsection (1) [or (1A)] above—

(a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or

(b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker [or licensed water supplier] if—

(i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and

(ii) in the case of opening a stopcock, [subsection (2A) below applies].

[(2A) This subsection applies—

(a) in the case of a stopcock belonging to a water undertaker, if the stopcock was closed otherwise than by the undertaker;

(b) in the case of a stopcock belonging to a licensed water supplier—

(i) if the stopcock was closed otherwise than by the supplier; or

(ii) if the stopcock was closed by the supplier and the person in question for the purposes of subsection (2) above is the water undertaker whose supply system is used for the purpose of the supply made by the supplier,

and in this subsection the reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.]

(3) Any person who, without the consent of the water undertaker—

(a) attaches any pipe or apparatus—

(i) to any resource main, water main or other pipe vested in a water undertaker; or

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(ii) to any service pipe which does not belong to such an undertaker but which is a pipe by means of which water is supplied by such an undertaker to any premises;

(b) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or

(c) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this [subsection],

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

[(3A) Any person who, without the consent of the licensed water supplier—

(a) attaches any pipe or apparatus to any pipe which is—

(i) vested in a licensed water supplier; and

(ii) used in connection with the carrying on by the supplier of the activities authorised by its licence;

(b) attaches any pipe or apparatus to any service pipe which does not belong to such a supplier or a water undertaker but which is a pipe by means of which water is supplied by such a supplier to any premises;

(c) makes any alteration in a service pipe by means of which water is so supplied, or in any apparatus attached to any such pipe; or

(d) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this subsection,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.]

(4) In proceedings against any person for an offence by virtue of paragraph (c) of subsection (3) above [or paragraph (d) of subsection (3A) above] it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in [subsection (3) or (3A) above (as the case may require)].

(5) If any person wilfully or negligently injures or suffers to be injured any water fitting belonging to a water undertaker, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

[(5A) If any person wilfully or negligently injures or suffers to be injured any water fitting which—

(a) belongs to a licensed water supplier; and

(b) is used in connection with the carrying on by the supplier of the activities authorised by its licence,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.]

(6) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the water undertaker in question; and any such breach of duty which causes the undertaker to sustain loss or damage shall be actionable at the suit of the undertaker.

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(7) The amount recoverable by virtue of subsection (6) above from a person who has committed an offence under subsection (3) above shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

(8) A water undertaker may—

(a) do all such work as is necessary for repairing any injury done in contravention of subsection (5) above; and

(b) recover the expenses reasonably incurred by the undertaker in doing so from the offender summarily as a civil debt.

[(8A) In this section "consumer"—

(a) in relation to a supply of water provided by a water undertaker to any premises, means a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall;

(b) in relation to a supply of water provided by a licensed water supplier to any premises, means a person who is for the time being the person on whom liability to pay charges to the supplier in respect of that supply of water would fall.]

(9) In this section ["water fitting" has the same meaning] as in Part III of this Act; and in subsection (1) above the references to apparatus belonging to a water undertaker do not include references to any meter which belongs to such an undertaker and is used by it for the purpose of determining the amount of any charges which have been fixed by the undertaker by reference to volume.

NOTES

Derivation

Sub-ss (1)–(4), (6), (7), (9) derived from the Water Act 1989, s 167; sub-ss (5), (8) derived from the Water Act 1945, s 35(4), the Criminal Justice Act 1982, s 46, the Water Act 1989, Sch 25, para 7(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (2).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (2): words "or (1A)" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (3)(a).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (2): in para (b) words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (3)(b)(i).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (2): in para (b)(ii) words "subsection (2A) below applies" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (3)(b)(ii).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (2A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (4).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (3): in para (c) word "subsection" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (5).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (3A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (6).

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Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (4): words "or paragraph (d) of subsection (3A) above" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (7)(a).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (4): words "subsection (3) or (3A) above (as the case may require)" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (7)(b).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (5A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (8).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (8A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (9).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Sub-s (9): words ""water fitting" has the same meaning" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 39(1), (10).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Protection of meters

175 Offence of tampering with meter

(1) If any person—

(a) so interferes with a meter used by any relevant undertaker [or licensed water supplier] in determining the amount of any charges fixed in relation to any premises as intentionally or recklessly to prevent the meter from showing, or from accurately showing, the volume of water supplied to, or of effluent discharged from, those premises; or

(b) carries out any works which he knows are likely to affect the operation of such a meter or which require the disconnection of such a meter,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(2) A person shall not be guilty of an offence under this section in respect of anything done by him with the [appropriate consent].

[(3) In subsection (2) above, the "appropriate consent" means—

(a) if the meter is used by one relevant undertaker, the consent of that undertaker;

(b) if the meter is used by one licensed water supplier, the consent of that supplier;

(c) if the meter is used by two or more of the following persons—

(i) a relevant undertaker;

(ii) a licensed water supplier,

the consent of each of those persons.

(4) In subsection (3) above, references to the consent of a relevant undertaker are references to consent under section 176 below.]

NOTES

Derivation

This section derived from the Water Act 1989, Sch 10, para 3(1), (2).

Initial Commencement

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Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (a) words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 40(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (2): words "appropriate consent" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 40(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-ss (3), (4): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 40(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

176 Consent for the purposes of section 175

(1) Where an application is made to any relevant undertaker for a consent for the purposes of section 175 above, the undertaker—

(a) shall give notice of its decision with respect to the application as soon as reasonably practicable after receiving it; and

(b) subject to subsection (2) below, may make it a condition of giving any consent that the undertaker itself should carry out so much of any works to which the application relates as is specified in the notice of its decision.

(2) On such an application a relevant undertaker shall not refuse its consent, or impose any such condition as is mentioned in subsection (1)(b) above, unless it is reasonable to do so.

(3) Where any relevant undertaker has given a notice to any person imposing any such condition as is mentioned in subsection (1)(b) above, the undertaker—

(a) shall carry out those works as soon as reasonably practicable after giving the notice; and

(b) may recover from that person any expenses reasonably incurred by it in doing so.

(4) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

(a) as to whether the undertaker or that other person should bear any expenses under subsection (3) above; or

(b) as to the amount of any expenses to be borne by any person under that subsection,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by [the Authority].

(5) Subsection (3) above shall not apply where the person who was given the notice notifies the undertaker that the carrying out of the works to which the condition relates is no longer required.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, Sch 10, para 3(3); sub-ss (3), (5) derived from the Water Act 1989, Sch 10, para 3(4); sub-s (4) derived from the Water Act 1989, Sch 10, para 5.

Initial Commencement

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Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (4): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

177 Financial obligations with respect to any interference with a meter

(1) A relevant undertaker which carries out any works made necessary by the commission of an offence under section 175 above shall be entitled to recover any expenses reasonably incurred in carrying out those works from the person who committed the offence.

(2) Any person who sustains any loss or damage in consequence of any failure by any relevant undertaker—

(a) to comply with any obligation imposed on it by section 176 above; or

(b) to exercise reasonable care in the performance of the duty imposed by subsection (3)(a) of that section,

shall be entitled to recover compensation from the undertaker.

(3) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

(a) as to whether the undertaker or that other person should bear any expenses under this section;

(b) as to whether the undertaker should pay any compensation under this section; or

(c) as to the amount of any expenses to be borne by any person under this section or as to the amount of any such compensation,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by [the Authority].

NOTES

Derivation

Sub-ss (1), (3) derived from the Water Act 1989, Sch 10, paras 3(6), 5; sub-s (2) derived from the Water Act 1989, Sch 10, para 3(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

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Obstruction of sewerage works etc

178 Obstruction of sewerage works etc

(1) A person who wilfully obstructs any person acting in the execution of any of the relevant sewerage provisions shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

(2) If on a complaint made by the owner of any premises, it appears to a magistrates' court that the occupier of those premises is preventing the owner of those premises from carrying out any work which he is required to carry out by or under any of the relevant sewerage provisions, the court may order the occupier to permit the carrying out of the work.

(3) Sections 300 to 302 of the Public Health Act 1936 (which relate to the determination of questions by courts of summary jurisdiction and to appeals against such determinations) shall apply for the purposes of and in relation to the determination under subsection (2) above of any matter by a magistrates' court—

(a) as they apply for the purposes of or in relation to a determination by such a court under that Act; and

(b) in the case of section 302, as if the reference to a decision of a local authority included a reference to a decision of a sewerage undertaker.

NOTES

Derivation

Sub-ss (1), (2) derived from the Public Health Act 1936, ss 288, 289, the Criminal Justice Act 1982, ss 35, 38.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Chapter III
Supplemental Provisions with respect to Undertakers' Powers

Vesting of works in undertaker

179 Vesting of works in undertaker

(1) Subject to [subsections (1A) and (3) below]—

(a) every relevant pipe which has been laid, in exercise of any power conferred by this Part or otherwise, by a relevant undertaker; and

(b) every sewage disposal works constructed by a sewerage undertaker,

shall vest in the undertaker which laid it or, as the case may be, the undertaker which constructed them.

[(1A) Subsection (1) above is subject to any provision to the contrary contained in an agreement between the relevant undertaker and the person in whom an interest in the pipe or works is or is to be vested; but no agreement may be made between a relevant undertaker and any other person for the vesting in that person of any pipe laid in pursuance of section 66B(3)(a)(ii) above or of subsection (2)(b)(i) of section 66C above by virtue of subsection (3)(b) of that section.]

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(2) In addition to the sewers and works which vest in a sewerage undertaker by virtue of subsection (1) above, the following shall also vest in such an undertaker, that is to say—

(a) every sewer[, lateral drain] or sewage disposal works with respect to which a declaration of vesting made by that undertaker under Chapter II of Part IV of this Act takes effect; and

(b) every sewer which is laid in the area of that undertaker under Part XI of the Highways Act 1980 (making up private streets) and is not a sewer belonging to a road maintained by a highway authority.

[(2A) In addition to the water mains and service pipes which vest in a water undertaker by virtue of subsection (1) above, every water main and so much of each service pipe with respect to which a declaration of vesting made by a water undertaker under Chapter 2 of Part 3 of this Act takes effect shall also vest in that undertaker.]

(3) Subsection (1) above shall not apply to a service pipe laid in a street other than the street in which the water main with which it connects is situated and shall not apply to a service pipe laid otherwise than in a street where that pipe is laid—

(a) in pursuance of the duty imposed by virtue of section 46(4) above; or

(b) in substitution for a service pipe belonging to a person other than the person who lays the replacement pipe.

(4) If any water fittings let for hire by a water undertaker are suitably marked, they—

(a) shall continue to be the property of and removable by the undertaker, even if they are fixed to some part of the premises in which they are situated or are laid in the soil under any premises; and

(b) shall not be subject to distress . . . or be liable [to be taken control of under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, or] to be taken in execution under any process of any court or in any proceedings in bankruptcy against a person in whose possession they are;

but nothing in this subsection shall affect the valuation for rating of any rateable hereditament.

(5) It is hereby declared that anything which, in pursuance of any arrangements under section 97 above, is done on behalf of a sewerage undertaker by a relevant authority within the meaning of that section is, subject to any provision to the contrary contained in any such arrangements, to be treated for the purposes of this section as done by the undertaker.

(6) The preceding provisions of this section are without prejudice, in relation to any company appointed to be a relevant undertaker, to the vesting of anything in that company by virtue of any scheme under Schedule 2 to this Act or of the exercise by any relevant undertaker of any power to acquire property by agreement or compulsorily.

(7) In this section—

"relevant pipe"—

(a) in relation to a water undertaker, means any water main (including a trunk main), resource main, discharge pipe or service pipe; and

(b) in relation to a sewerage undertaker, means any sewer[, lateral drain] or disposal main;

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and

"water fittings" has the same meaning as in Part III of this Act;

and water fittings let on hire by a water undertaker shall be treated as suitably marked for the purposes of this section if and only if they bear either such a distinguishing metal plate affixed to them or such a distinguishing brand or other mark conspicuously impressed or made on them as sufficiently indicates the undertaker as the actual owner of the fittings.

NOTES

Derivation

Sub-ss (1)–(3), (5), (6) derived from the Water Act 1989, s 153(2)–(6); sub-s (4) derived from the Water Act 1945, s 35(2), and the Water Act 1989, Sch 25, para 7(5); sub-s (7) derived from the Water Act 1945, s 35(2), and the Water Act 1989, Sch 19, para 1(1), Sch 25, para 7(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "subsections (1A) and (3) below" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 41(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 41(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (a) words ", lateral drain" in square brackets inserted by the Water Act 2003, s 97(1), (7)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (2A): inserted by the Water Act 2003, s 92(4).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

Sub-s (4): in para (b) words omitted repealed by the Tribunals, Courts and Enforcement Act 2007, ss 86, 146, Sch 14, para 46, Sch 23, Pt 4.

Date in force: 6 April 2014: see SI 2014/768, art 2(1).

Sub-s (4): in para (b) words "to be taken control of under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, or" in square brackets inserted by the Tribunals, Courts and Enforcement Act 2007, s 62(3), Sch 13, para 98.

Date in force: 6 April 2014: see SI 2014/768, art 2(1).

Sub-s (7): in definition "relevant pipe" in para (b) words ", lateral drain" in square brackets inserted by the Water Act 2003, s 97(1), (7)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(1).

Damage etc caused by works

180 Compensation for damage caused by works etc

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Schedule 12 to this Act shall have effect for making provision for imposing obligations for the purpose of minimising the damage caused in the exercise of certain powers conferred on undertakers and for imposing obligations as to the payment of compensation.

NOTES

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(2).

181 Complaints with respect to the exercise of works powers on private land

(1) Subject to subsection (2) below, it shall be the duty of [the Authority] to investigate any complaint made or referred to [it] with respect to the exercise by a relevant undertaker of any powers conferred on that undertaker by or by virtue of section 159 or 161(2) above.

(2) [The Authority] shall not be required to investigate any such complaint as is mentioned in subsection (1) above if—

(a) the complaint appears to [the Authority] to be vexatious or frivolous;

(b) [the Authority] is not satisfied that the complaint has been brought by the complainant to the attention of the relevant undertaker in question and that that undertaker has been given a reasonable opportunity of investigating and dealing with it; or

(c) the complaint was first made to [the Authority] or [the Council] more than twelve months, or such longer period as [the Authority] may for special reasons allow, after the matters to which the complaint relates first came to the notice of the complainant.

(3) Where [the Authority], in pursuance of [its] duty under this section, investigates a complaint with respect to the exercise of any powers by a relevant undertaker—

(a) it shall be the duty of that undertaker to provide [the Authority] with all such information and assistance as [it] may reasonably require for the purposes of [its] investigation; and

(b) it shall be the duty of [the Authority], before giving any direction under subsection (4) below, to consider any representations made to [it] by the complainant or by that undertaker with respect to the subject-matter of the complaint.

(4) If on a complaint under subsection (1) above with respect to the exercise of any powers by a relevant undertaker, [the Authority] is satisfied that that undertaker—

(a) has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or

(b) by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage or to be subjected to inconvenience,

[the Authority] may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss, damage or inconvenience.

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(5) [The Authority] shall not under subsection (4) above direct a relevant undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other enactment except in so far as it appears to [it] appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience.

(6) The duties of a relevant undertaker by virtue of subsection (3)(a) above shall be enforceable under section 18 above by [the Authority].

(7) A person to whom any amount is required, in pursuance of a direction under subsection (4) above, to be paid by a relevant undertaker shall be entitled to recover that amount from that undertaker by virtue of this section.

(8) The Secretary of State may by regulations substitute a different amount for the amount for the time being specified in subsection (4) above.

NOTES

Derivation

Sub-ss (1)–(5), (8) derived from the Water Act 1989, s 162(1)–(5), (11); sub-ss (6), (7) derived from the Water Act 1989, s 162(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1)–(6): words “the Authority”, “it”, “The Authority” and “its” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (c) words “the Council” in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (4).

Date in force: 1 October 2005: see SI 2005/2714, art 2(l)(v)(aa), (cc).

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(4).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

182 Codes of practice with respect to work on private land

(1) For the purposes of section 181 above it shall be the duty of every company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker—

(a) as soon as reasonably practicable after its appointment takes effect, to submit to the Secretary of State for his approval a code of practice with respect to its exercise of any powers conferred by or by virtue of section 159 or 161(2) above; and

(b) if required to do so by the Secretary of State at any subsequent time, to submit proposed modifications of that code to the Secretary of State for his approval.

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(2) The Secretary of State, if he considers it appropriate to do so for the purpose of promoting what appear to him to be desirable practices with respect to the exercise, by any company holding an appointment under Chapter I of Part II of this Act as a relevant undertaker, of any powers conferred by or by virtue of section 159 or 161(2) above, may at any time by order made by statutory instrument, in relation to that company—

(a) approve any code of practice with respect to the exercise of those powers which has been submitted to him (whether or not under subsection (1) above) by that company for his approval;

(b) approve any modifications of such a code which have been so submitted; or

(c) withdraw his approval for any such code or modification.

(3) A contravention of a code of practice as for the time being approved under this section in relation to a company shall not—

(a) affect the powers conferred on that company as a relevant undertaker by this Part;

(b) of itself entitle any person to be paid any amount under subsection (4) of section 181 above; or

(c) give rise to any criminal or civil liability;

but [the Authority] shall take into account whether there has been any such contravention in determining whether to give a direction under that subsection to that company and in determining the amount to which any such direction relates.

(4) The Secretary of State shall not make an order under subsection (2) above unless he has first consulted all such persons as he considers it appropriate to consult.

(5) The duties of a relevant undertaker under subsection (1) above shall be enforceable under section 18 above by the Secretary of State.

NOTES

Derivation

This section derived from the Water Act 1989, s 162(6)–(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(5).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides

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that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Protective provisions

183 Protection for particular undertakings

Schedule 13 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by relevant undertakers.

NOTES

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(6).

184 Power of certain undertakers to alter public sewers etc

(1) The [Environment Agency] [or the NRBW] or the Civil Aviation Authority or any internal drainage board, dock undertakers, railway undertakers[, airport operator or licence holder] may, after giving reasonable notice to the sewerage undertaker concerned, at their own expense and on substituting an equivalent, take up, divert or alter the level of any sewers, drains, culverts or other pipes which—

(a) are vested in the undertaker; and

(b) pass under or interfere with, or interfere with the alteration or improvement of, as the case may be—

(i) any watercourse or other works vested in or under the control of the [Environment Agency] [or the NRBW] or that internal drainage board;

(ii) any property of the Civil Aviation Authority;

(iii) any river, canal towing path or works forming part of the undertaking of those dock undertakers;

(iv) the railway of the railway undertakers; . . .

(v) the airport in question[; or

(vi) any property of a licence holder which is used by the licence holder for the purpose of carrying out activities authorised by the licence].

(2) In subsection (1) above "an equivalent", in relation to any sewers, drains, culverts or pipes means other sewers, drains, culverts or pipes which will be equally effectual and will entail no additional expense for the sewerage undertaker in question.

(3) Any difference of opinion which arises under this section between a sewerage undertaker and any person as to whether any sewers, drains, culverts or pipes substituted or proposed to be substituted

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for sewers, drains, culverts or pipes of that undertaker—

(a) are or will be equally effectual; or

(b) entail or will entail additional expense for the sewerage undertaker,

may, at the option of the party complaining, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

(4) In this section—

"airport operator" means the person who is the airport operator for the purposes of Part V of the Airports Act 1986 in relation to an airport to which that Part of that Act applies; . . .

"dock undertakers" has the same meaning as in Chapter II of Part IV of this Act[; and

"licence holder" means a person who holds a licence under Chapter I of Part I of the Transport Act 2000 and "licence" shall be construed accordingly].

NOTES

Derivation

Sub-ss (1)–(3) derived from the Public Health Act 1936, ss 330, 332, the Water Act 1973, s 14(2), the Civil Aviation Act 1982, Sch 2, para 1(2), the Airports Act 1986, Sch 2, para 2, and the Water Act 1989, Sch 8, para 1.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words "Environment Agency" in square brackets in both places they occur substituted by the Environment Act 1995, s 120, Sch 22, para 119.

Sub-s (1): words "or the NRBW" in square brackets in both places they occur inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 252.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): words ", airport operator or licence holder" in square brackets substituted by SI 2001/4050, art 2, Schedule, Pt II, para 8(a).

Date in force: 21 December 2001: see SI 2001/4050, art 1.

Sub-s (1): in para (b)(iv) word omitted repealed by SI 2001/4050, art 2, Schedule, Pt II, para 8(b)(i).

Date in force: 21 December 2001: see SI 2001/4050, art 1.

Sub-s (1): para (b)(vi) and word "or" immediately preceding it inserted by SI 2001/4050, art 2, Schedule, Pt II, para 8(b)(ii).

Date in force: 21 December 2001: see SI 2001/4050, art 1.

Sub-s (4): in definition "airport operator" word omitted repealed by SI 2001/4050, art 2, Schedule, Pt II, para 8(c)(i).

Date in force: 21 December 2001: see SI 2001/4050, art 1.

Sub-s (4): definition "licence holder" and word "and" immediately preceding it inserted by SI 2001/4050, art 2, Schedule, Pt II, para 8(c)(ii).

Date in force: 21 December 2001: see SI 2001/4050, art 1.

185 Duty to move pipes etc in certain cases

(1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an interest in that land or in adjacent land may by

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notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.

(2) Subject to subsections (3) and (4) below, where a notice is served on a relevant undertaker under subsection (1) above, it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.

(3) Nothing in this section shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.

(4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under subsection (1) above that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under subsection (5) below.

(5) Where a relevant undertaker carries out any works under this section by virtue of a notice having been served by any person under subsection (1) above, the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.

(6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under subsection (5) above, the undertaker shall pay interest at such rate as may be determined either—

(a) by the undertaker with the approval of [the Authority]; or

(b) in default of a determination under paragraph (a) above, by [the Authority],

on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.

(7) An approval or determination by [the Authority] for the purposes of subsection (6) above may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.

(8) The duty of a relevant undertaker under this section shall be enforceable under section 18 above by [the Authority].

(9) In this section—

"improvement", in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

"relevant pipe" has the same meaning as in section 158 above.

NOTES

Derivation

This section derived from the Water Act 1989, s 161.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

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Sub-ss (6)–(8): words “the Authority” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

186 Protective provisions in respect of flood defence works and watercourses etc

(1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—

(a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or

(b) with any such works used by any person for irrigating any land.

(2) Without prejudice to the construction of subsection (1) above for the purposes of its application in relation to the other provisions of this Act, that subsection shall have effect in its application in relation to the relevant sewerage provisions as if any use of or injury to any such works as are mentioned in paragraph (a) or (b) of that subsection were such an interference as is mentioned in that subsection.

(3) Nothing in the relevant sewerage provisions shall authorise a sewerage undertaker injuriously to affect—

(a) any reservoir, canal, watercourse, river or stream, or any feeder thereof; or

(b) the supply, quality or fall of water contained in, or in any feeder of, any reservoir, canal, watercourse, river or stream,

without the consent of any person who would, apart from this Act, have been entitled by law to prevent, or be relieved against, the injurious affection of, or of the supply, quality or fall of water contained in, that reservoir, canal, watercourse, river, stream or feeder.

(4) Nothing in the relevant sewerage provisions, except sections 113 and 116 above, shall be taken to affect any right of drainage acquired by any person by prescription or otherwise before 1st October 1937.

(5) Where a relevant undertaker proposes, otherwise than in exercise of any compulsory powers, to construct or alter any relevant inland waters in any internal drainage district or to construct or alter any works on or in any such inland waters, the undertaker shall consult the drainage board for that district before doing so.

(6) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.

(7) Any dispute—

(a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;

(b) as to whether any consent for the purposes of this section is being unreasonably withheld;

(c) as to whether any condition subject to which any such consent has been given was reasonable; or

(d) as to whether the supply, quality or fall of water in any reservoir, canal, watercourse, river, stream or feeder is injuriously affected by the exercise of powers under the relevant sewerage provisions,

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shall be referred (in the case of a dispute falling within paragraph (d) above, at the option of the party complaining) to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

(8) In this section "relevant inland waters" means any inland waters other than any which form part of a main river for the purposes of Part IV of the Water Resources Act 1991.

(9) The provisions of this section shall be without prejudice to the provisions of Schedule 13 to this Act.

NOTES

Derivation

Sub-ss (1), (9) derived from the Public Health Act 1936, s 334, the Water Act 1973, s 14(2), and the Water Act 1989, s 160(4), Sch 8, para 1; sub-ss (3), (4) derived from the Public Health Act 1936, ss 331, 339, the Water Act 1973, s 14(2), and the Water Act 1989, Sch 8, para 1; sub-ss (5), (6), (8) derived from the Water Act 1989, s 160(5), (6), (9); sub-s (7) derived from the Public Health Act 1936, s 332, the Water Act 1973, s 14(2), and the Water Act 1989, s 160(7), Sch 8, para 1.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(8).

187 Works in tidal lands etc

(1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise any relevant undertaker to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State.

(2) An approval for the purposes of subsection (1) above shall be given to a relevant undertaker by the service on that undertaker of a notice containing the approval.

(3) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of the relevant sewerage provisions or by any of sections 158, 159, 161, 163 and 165 above, except the power conferred by section 161(3).

NOTES

Derivation

This section derived from the Public Health Act 1936, s 340, the Water Act 1989, Sch 19, para 7.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(9).

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Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

188 Mineral rights

Schedule 14 to this Act (which makes provision with respect to the acquisition of mineral rights by relevant undertakers and with respect to the working of mines and minerals where pipes, sewers or other related works are affected) shall have effect and, in the case of the compulsory acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

NOTES

Derivation

This section derived from the Water Act 1989, s 159.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

189 Power to sell minerals deriving from sewerage works

(1) A sewerage undertaker may sell any materials which—

(a) have been removed by that undertaker from any premises, including any street, when carrying out works under, or otherwise carrying into effect the provisions of, the relevant sewerage provisions; and

(b) are not before the end of three days from the date of their removal claimed by the owner and taken away by him.

(2) Where a sewerage undertaker sells any materials under this section, they shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by the undertaker from him.

(3) This section is subject to any rights conferred by virtue of paragraph 1 of Schedule 14 to this Act, does not apply to refuse removed by a sewerage undertaker and is not to be taken as prejudicing the determination of the rights and liabilities of a relevant undertaker when exercising a power in any case to which the preceding provisions of this section do not apply.

NOTES

Derivation

This section derived from the Public Health Act 1936, s 276, the Water Act 1973, s 14(2), and the Water Act 1989, Sch 8, para 1.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

190 Saving for planning controls

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Without prejudice to the operation of section 90 of the Town and Country Planning Act 1990 (planning permission deemed to be granted in certain cases) in relation to any provision made by or under this Act or any other enactment which by virtue of this Act or the Water Act 1989 relates to the functions of a relevant undertaker, nothing in this Act or in any such enactment shall be construed as authorising the carrying out of any development (within the meaning of that Act of 1990) without the grant of such planning permission as may be required by that Act of 1990.

NOTES

Derivation

This section derived from the Water Act 1989, s 163, the Planning (Consequential Provisions) Act 1990, Sch 2, para 81(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this section, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(10).

191 Duties to make recreational facilities available when building reservoirs in Wales

(1) Where a water undertaker carries out any works for or in connection with the construction or operation of a reservoir in Wales which—

(a) permanently affect one or more communities; and

(b) are not primarily intended by that undertaker to benefit the inhabitants of that or those communities,

it shall be the duty of that undertaker to make available facilities for recreation or other leisure-time occupation for the benefit of those inhabitants or to assist others to make such facilities available.

(2) It shall be the duty of every water undertaker, in performing its duty under subsection (1) above, to consult—

(a) the community councils of the communities affected, in the case of communities having such councils; and

(b) in any case, the council of any [county or county borough] in which any community affected is situated.

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

NOTES

Derivation

This section derived from the Water Act 1989, s 157(2)–(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

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Amendment

Sub-s (2): words in square brackets substituted by the Local Government (Wales) Act 1994, s 22(5), Sch 11, para 2(1).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Interpretation of Part VI

192 Interpretation of Part VI

(1) In this Part "discharge pipe" means a pipe from which discharges are or are to be made under section 165 above.

(2) In this Part references to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe (within the meaning of section 158 above) as the pipe replaced.

(3) The powers conferred by this Part on a relevant undertaker shall be exercisable both inside and outside the undertaker's area.

[(3A) A relevant undertaker proposing to exercise any of its powers under section 158 or 159 above outside its own area shall, if subsection (3B) below applies, give notice of its proposal to the water undertaker or (as the case may be) sewerage undertaker for the area in question and, if that subsection applies, shall not carry out its proposal—

(a) without the consent of that other undertaker; or

(b) where that other undertaker refuses to give its consent, or fails to give its consent before the end of the period of 28 days beginning with the day on which it is notified of the proposal, without the consent of [the Authority].

(3B) This subsection applies where the proposal is to lay—

(a) a water main which is not intended to be—

(i) a trunk main; or

(ii) a water main used solely for the purpose of supplying water otherwise than for domestic purposes; or

(b) a sewer which is intended to be a public sewer but not a storm-water overflow sewer.]

(4) In so far as any powers conferred by this Part on a relevant undertaker authorise the removal of any pipe or the alteration of its size or course, those powers shall be subject to such obligations by virtue of which the undertaker is required—

(a) to maintain a pipe or a connection with it; or

(b) to alter a pipe only where certain conditions are satisfied,

as are imposed on the undertaker by or under any enactment.

(5) The powers conferred by virtue of this Part are without prejudice to any power conferred by virtue

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of any agreement and are cumulative.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1989, Sch 19, para 1(6); sub-s (2) derived from the Water Act 1989, Sch 19, para 1(4); sub-ss (3), (4) derived from the Water Act 1989, Sch 19, para 1(3); sub-s (5) derived from the Public Health Act 1936, s 328, and the Water Act 1989, Sch 19, para 11.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (3A), (3B): inserted by the Competition and Service (Utilities) Act 1992, s 47.

Sub-s (3A): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of sub-ss (1), (4) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(11).

Part VII
Information Provisions

Reports

[192A Forward work programmes]

[(1) The Authority and the Council shall, before each financial year, each publish a document (the "forward work programme") containing a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.

(2) That description must include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority or the Council expects to incur during the year in the exercise of its functions.

(4) Before publishing the forward work programme for any year, the Authority or the Council shall give notice—

(a) containing a draft of the forward work programme; and

(b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The notice under subsection (4) above must be published by the Authority or the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

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(6) The Authority must send a copy of any notice given by it under subsection (4) above to the Council, the Secretary of State and the Assembly.

(7) The Council must send a copy of any notice given by it under subsection (4) above to the Authority, the Secretary of State and the Assembly.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 38(1).

Date in force: 1 October 2004: see SI 2004/2528, art 2(d)(i); for transitional provisions see SI 2005/2714, art 5(1), Schedule, paras 1, 2, 8–10.

[192B Annual and other reports]

[(1) The Authority shall, as soon as practicable after the end of each financial year, make to the Secretary of State a report (the "annual report" for that year) on—

(a) its activities during that year; and

(b) the activities of the [CMA] during that year in respect of any references made [by the Authority].

(2) The annual report for each year shall include—

(a) a general survey of developments in respect of matters falling within the scope of the Authority's functions;

(b) a report on the progress of the projects described in the forward work programme for that year;

(c) a summary of final and provisional orders made and penalties imposed by the Authority during the year;

(d) a report on such matters relating to any relevant undertaker whose area is wholly or mainly in Wales as the Assembly may from time to time require; and

(e) a report on such other matters as the Secretary of State may from time to time require.

(3) The annual report for each year shall set out any general directions given by the Secretary of State under section 27(3) above.

(4) The Secretary of State or (as the case may be) the Assembly shall consult the Authority before exercising the power under subsection (2)(d) or (e) above in relation to any matter.

(5) The Secretary of State shall—

(a) lay a copy of each annual report before each House of Parliament; and

(b) arrange for the report to be published in such manner as he considers appropriate.

(6) The Authority may also prepare other reports with respect to any matter falling within the scope of its functions and may arrange for any such report to be published in such manner as it considers appropriate.

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(7) The Authority shall send a copy of each annual or other report under this section to the Assembly, the Council and the Chief Inspector of Drinking Water.

(8) In making or preparing any report under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 38(1).

Date in force: 1 October 2004: see SI 2004/2528, art 2(d)(i); for transitional provisions see SI 2005/2714, art 5(1), Schedule, paras 1, 2, 8–10.

Sub-s (1): in para (b) reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 89(a).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (1): in para (b) words "by the Authority" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 89(b).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

193 . . .

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NOTES

Amendment

Repealed by the Water Act 2003, ss 38(2), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2004: see SI 2004/2528, art 2(d)(ii).

194 . . .

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 38(2), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(b), (m)(i); for savings see art 5(1), Schedule, para 2 thereto.

Registers, maps etc

195 [The Authority's] register

(1) [The Authority] shall, at such premises and in such form as [it] may determine, maintain a register . . ..

(2) Subject to any direction given under subsection (3) below, [the Authority] shall cause to be entered in the register the provisions of—

(a) every appointment under Chapter I of Part II of this Act, every termination or transfer of any such appointment, every variation of the area for which any company holds any such

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appointment and every modification of the conditions of any such appointment;

[(aa) every licence under Chapter 1A of Part 2 of this Act, every variation or revocation of any such licence and every modification of the conditions of any such licence;]

(b) every direction, consent or determination given or made under any such appointment by the Secretary of State, the [CMA] or [the Authority itself];

[(bb) every direction, consent or determination given or made under any such licence by the Secretary of State, the Authority, the Assembly[, the Environment Agency or the NRBW];

(bc) every determination made by the Authority under section 17E or 66D(1) above [or regulation 5(1) of the Water Supply Licence (New Customer Exception) Regulations 2005];]

(c) every final enforcement order made under section 18 above, every provisional enforcement order made or confirmed under that section and every revocation of such a final or provisional enforcement order;

(d) every undertaking given to and accepted by the Secretary of State or [the Authority] for the purposes of subsection (1)(b) of section 19 above and every notice under subsection (3) of that section; . . .

(e) every special administration order and every discharge of such an order;

[(f) every penalty imposed under section 22A(1) or (2) above and every notice under section 22A(6) above][; and

(g) every designation made by the Authority under section 66G or 66H above].

(3) If it appears to the Secretary of State that the entry of any provision [or, in the case of information that falls to be entered under subsection (3B), any information] in the register would be against the public interest, he may direct [the Authority] not to enter that provision [or that information] in the register; and [the Authority] shall comply with any such direction.

[(3AA) Before giving a direction under subsection (3) above which relates to a licensed water supplier, the Secretary of State shall consult the Assembly.]

[(3A) [The Authority] shall also cause to be entered on the register the provisions of any guidance given to [it] by the Secretary of State under section 143(7) above.]

[(3B) Subject to any direction given under subsection (3), the Authority must cause to be entered on the register such information about an agreement falling within section 142(2)(b) as the Authority thinks fit.

(3C) Subsection (3B) has effect in relation to agreements made after the coming into force of section 33 of the Water Act 2014.]

[(4) The Authority must publish a notice setting out—

(a) the times at which the contents of the register are for the time being available for inspection by the public;

(b) the fees that must be paid for, or in connection with, an inspection of the contents of the register;

(c) the fees that must be paid for, or in connection with, the supply by the Authority of—

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(i) a copy of the contents of the register, certified by the Authority as being a true copy, or

(ii) an extract from the contents of the register, certified by the Authority as being a true extract.

(4A) The Authority must publish the notice in such manner as the Authority thinks appropriate for bringing it to the attention of the persons who, in the Authority's opinion, are likely to be affected by it.

(4B) The Authority must make the contents of the register available for inspection by the public—

(a) during such hours, and

(b) on payment of such fees,

as are set out in the notice under subsection (4) that is for the time being in force.]

(7) Any sums received by [the Authority] under this section shall be paid into the Consolidated Fund.

NOTES

Derivation

This section derived from the Water Act 1989, s 31.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Section heading: words "The Authority's" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (1)–(3), (3A), (5), (7): words "The Authority", "it", "the Authority" and "the Authority itself" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): words omitted repealed by the Water Act 2014, s 34(1), (2).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(i).

Sub-s (2): para (aa) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 42(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (b) reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 90.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (2): paras (bb), (bc) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 42(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): in para (bb) words ", the Environment Agency or the NRBW" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 253.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (2): in para (bc) words "or regulation 5(1) of the Water Supply Licence (New Customer Exception) Regulations 2005" in square brackets inserted by virtue of SI 2005/3076, reg 5(2).

Date in force: 1 December 2005: see SI 2005/3076, reg 1.

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Sub-s (2): in para (d) word omitted repealed by the Water Act 2003, ss 48(2), 101(2), Sch 9, Pt 2.
Date in force: 1 April 2005: see SI 2005/968, art 2(i), (n)(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.
Sub-s (2): para (f) inserted by the Water Act 2003, s 48(2).
Date in force: 1 April 2005: see SI 2005/968, art 2(i); for transitional provisions see art 4(1), Sch 2, paras 3, 4 thereto.
Sub-s (2): para (g) and word "; and" immediately preceding it inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 42(1), (4).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.
Sub-s (3): words from "or, in the case" to "(3B), any information" in square brackets inserted by the Water Act 2014, s 33(1), (3)(a).
Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(h).
Sub-s (3): words "or that information" in square brackets inserted by the Water Act 2014, s 33(1), (3)(b).
Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(h).
Sub-s (3AA): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 42(1), (5).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.
Sub-s (3A): inserted by the Water Industry Act 1999, s 15(1), Sch 3, para 4(1), (3).
Date in force: 23 December 1999: see SI 1999/3440, art 2(c).
Sub-ss (3B), (3C): inserted by the Water Act 2014, s 33(1), (3)(c).
Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(h).
Sub-ss (4), (4A), (4B): substituted, for sub-ss (4)–(6) as originally enacted, by the Water Act 2014, s 35.
Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(j).

See Further

See further, in relation to the application of sub-ss (1), (2) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 14(1).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

[195A Reasons for decisions]

[(1) This section applies to the following decisions of the Authority, the Secretary of State or the Assembly, namely—

(a) the modification of the conditions of an appointment under Chapter 1 of Part 2 of this Act or the variation of the area to which an appointment relates;

(b) the modification of the conditions of a licence under Chapter 1A of that Part;

(c) the termination of such an appointment or the revocation of such a licence;

(d) the giving of any directions or consent in pursuance of a condition included in such an appointment by virtue of section 12(1) above or in such a licence by virtue of section 17G(3)(a) or (b) above;

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(e) the determination of a question referred in pursuance of a condition included in such an appointment by virtue of section 12(2) above or in such a licence by virtue of section 17G(3)(c) above;

(f) the making of a determination under section 17E or 66D(1) above; and

(g) the making of a final enforcement order, the making or confirmation of a provisional enforcement order or the revocation of a final order or of a provisional order which has been confirmed.

(2) As soon as reasonably practicable after making such a decision the Authority, the Secretary of State or the Assembly shall publish a notice stating the reasons for the decision in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

(3) A person publishing a notice under subsection (2) above shall serve a copy on the company holding the appointment or licence to which the decision relates.

(4) A person preparing a notice under subsection (2) above shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

(5) This section does not apply in relation to a decision of the Authority resulting in any provision which the Authority was directed under section 195(3) above not to enter in the register required to be kept under that section.]

NOTES

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 51.

Date in force: 1 April 2005: see SI 2005/968, art 2(j); for transitional provisions and savings see art 4(1), Sch 2, paras 1, 3, 4 thereto.

See Further

See further, in relation to the application of sub-s (1) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 14(2).

196 Trade effluent registers

(1) It shall be the duty of every sewerage undertaker to secure that copies of—

(a) every consent given or having effect as if given by the undertaker under Chapter III of Part IV of this Act;

(b) every direction given or having effect as if given by the undertaker under that Chapter;

(c) every agreement entered into or having effect as if entered into by the undertaker under section 129 above; and

(e) every notice served on the undertaker under section 132 above,

are kept available, at all reasonable times, for inspection by the public free of charge at the offices of the undertaker.

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(2) It shall be the duty of every sewerage undertaker, on the payment of such sum as may be reasonable, to furnish a person who requests it with a copy of, or of an extract from, anything kept available for inspection under this section.

(3) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by [the Authority].

NOTES

Derivation

This section derived from the Public Health (Drainage of Trade Premises) Act 1937, s 7A, the Water Act 1989, Sch 8, para 3(5).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): words "the Authority" in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Miscellaneous

Note: sub-s (1)(d) is missing in the Queen's Printers' copy

197 Register for the purposes of works discharges

(1) Every water undertaker shall keep a register of persons and premises for the purposes of section 166 above.

(2) A water undertaker shall enter the name and address of a person in that register in respect of any premises which abut on any watercourse if that person has requested to be so registered and is either—

(a) the owner or occupier of those premises; or

(b) an officer of an association of owners or occupiers of premises which abut on that watercourse and include those premises.

(3) If any water undertaker contravenes, without reasonable excuse, any of the requirements of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

NOTES

Derivation

Sub-ss (1), (2) derived from the Water Act 1989, Sch 19, para 9; sub-s (3) derived from the Water Act 1989, Sch 19, para 9(8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

198 Maps of waterworks

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(1) Subject to subsections (4) and (5) below, it shall be the duty of every water undertaker to keep records of the location of—

(a) every resource main, water main or discharge pipe which is for the time being vested in that undertaker; and

(b) any other underground works, other than a service pipe, which are for the time being vested in that undertaker.

[(1A) Subject to subsection (4) below, it shall also be the duty of every water undertaker to keep records of the location and (in the case of a water main) other relevant particulars of—

(a) every water main in relation to which a declaration of vesting has been made by the undertaker under Chapter 2 of Part 3 of this Act but has not taken effect; and

(b) every water main which is the subject of any agreement to make such a declaration which has been entered into by (or on behalf of) the undertaker.

(1B) For the purposes of this section the other relevant particulars of a water main are (in addition to its location) particulars of whether it is a water main in relation to which a declaration has been made under Chapter 2 of Part 3 of this Act or a water main which is the subject of an agreement to make such a declaration.]

(2) It shall be the duty of every water undertaker to secure that the contents of any records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.

(3) Any information which is required under this section to be made available by a water undertaker for inspection by the public shall be so made available in the form of a map.

(4) For the purpose of determining whether any failure to make a modification of any records kept under this section constitutes a breach of the duty imposed by subsection (1) [or (1A)] above, that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this section are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.

(5) Nothing in this section shall require a water undertaker, at any time before 1st September 1999, to keep records of—

(a) any pipe which was laid before 1st September 1989; or

(b) any underground works which were completed before 1st September 1989,

unless those particulars were shown on 31st August 1989 on a map kept by a water authority or statutory water company under section 12 of Schedule 3 to the Water Act 1945 (maps of underground works).

(6) The reference in subsection (5) above to section 12 of Schedule 3 to the Water Act 1945 shall have effect, without prejudice to section 20(2) of the Interpretation Act 1978 (references to enactments to include references to enactments as amended, extended or applied), as including a reference to that section as applied, with or without modifications, by any local statutory provision.

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

(8) In this section “discharge pipe” has the same meaning as in Part VI of this Act.

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NOTES

Derivation

This section derived from the Water Act 1989, s 165.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1A), (1B): inserted by the Water Act 2003, s 92(5).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

Sub-s (4): words "or (1A)" in square brackets inserted by the Water Act 2003, s 92(5).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

199 Sewer maps

(1) Subject to subsections (6) to (8) below, it shall be the duty of every sewerage undertaker to keep records of the location and other relevant particulars—

(a) of every public sewer[, lateral drain] or disposal main which is vested in the undertaker;

(b) of every sewer [or lateral drain] in relation to which a declaration of vesting has been made by the undertaker under Chapter II of Part IV of this Act but has not taken effect; and

(c) of every drain or sewer which is the subject of any agreement to make such a declaration which has been entered into by the undertaker under section 104 above.

(2) For the purposes of this section the relevant particulars of a drain, sewer or disposal main are (in addition to its location) particulars—

(a) of whether it is a drain, sewer or disposal main and of the descriptions of effluent for the conveyance of which it is or is to be used; and

(b) of whether it is vested in the undertaker or, if it is not, of whether it is a sewer in relation to which a declaration has been made under Chapter II of Part IV of this Act or a drain or sewer which is the subject of an agreement under section 104 above.

(3) The records kept by a sewerage undertaker under this section shall be kept separately in relation to the area of each local authority within whose area there is any drain, sewer or disposal main of which that undertaker is required to keep records and to whom the undertaker is required under section 200 below to provide copies of the contents of those records.

(4) It shall be the duty of every sewerage undertaker to secure that the contents of all the records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the undertaker.

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(5) Any information which is required under this section to be made available by a sewerage undertaker for inspection by the public shall be so made available in the form of a map.

(6) For the purpose of determining whether any failure to make a modification of any records kept under this section constitutes a breach of the duty imposed by subsection (1) above, that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this section are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.

(7) Nothing in this section shall require a sewerage undertaker to keep records of any particulars of a drain, sewer or disposal main laid before 1st September 1989 if—

(a) the undertaker does not know of, or have reasonable grounds for suspecting, the existence of the drain, sewer or disposal main; or

(b) it is not reasonably practicable for the undertaker to discover the course of the drain, sewer or disposal main and it has not done so.

(8) Nothing in this section shall require a sewerage undertaker, at any time before 1st September 1999, to keep records of any particulars of any such drain, sewer or disposal main laid before 1st September 1989 as would not be excluded from its records by virtue of subsection (7) above unless—

(a) those particulars were shown on 31st August 1989 on a map kept by a local authority under section 32 of the Public Health Act 1936 (sewer maps); or

(b) it is a drain or sewer in relation to which a declaration of vesting, or an agreement to make such a declaration, has been made since 31st August 1989.

(9) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

NOTES

Derivation

Sub-ss (1), (4)–(6) derived from the Water Act 1989, s 166(1), (3), (5), (6); sub-ss (2), (3) derived from the Water Act 1989, s 166(2); sub-ss (7)–(9) derived from the Water Act 1989, s 166(7), (8).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (a) words ", lateral drain" in square brackets inserted by the Water Act 2003, s 97(1), (8)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): in para (b) words "or lateral drain" in square brackets inserted by the Water Act 2003, s 97(1), (8)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 14(3).

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Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

200 Provision of sewer maps to local authorities

(1) It shall be the duty of every sewerage undertaker so to provide local authorities, free of charge, with—

(a) copies of the contents of records kept under section 199 above; and

(b) copies of any modifications of those records,

as to ensure that every local authority to whose area any of those records relate are at all times informed of the contents for the time being of the records relating to their area.

(2) A local authority shall secure that so much of any information provided to them by virtue of this section as consists in the contents for the time being of records kept by a sewerage undertaker under section 199 above is available, at all reasonable times, for inspection by the public free of charge at an office of the authority.

(3) Any information which is required under this section to be provided to a local authority or to be made available by a local authority for inspection by the public shall be so provided or made available in the form of a map.

(4) The duties of a sewerage undertaker under this section shall be enforceable under section 18 above by the Secretary of State.

(5) In this section and, accordingly, in section 199(3) above "local authority", in relation to the Inner Temple and the Middle Temple, includes, respectively, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

NOTES

Derivation

This section derived from the Water Act 1989, s 166(3), (4), (5), (8), (9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of sub-ss (1), (2) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 14(4).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides

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that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Publication of certain information and advice

201 Publication of certain information and advice

(1) The Secretary of State may arrange for the publication, in such form and in such manner as he considers appropriate, of such information—

[(a) relating to any matter which is connected with the carrying out by a company holding an appointment under Chapter 1 of Part 2 of this Act of the functions of a relevant undertaker; or

(b) relating to any matter which is connected with the carrying on by a company holding a licence under Chapter 1A of that Part of the activities authorised by the licence,

as it may] appear to him to be in the public interest to publish.

(2) [The Authority] may arrange for the publication, in such form and in such manner as [it] considers appropriate, of such information and advice as it may appear to [it] to be expedient to give to any customer or potential customer of a company holding an appointment under Chapter I of Part II of this Act [or a licence under Chapter 1A of that Part].

(3) In arranging for the publication of any such information or advice the Secretary of State or [the Authority] shall have regard to the need for excluding, so far as that is practicable—

(a) any matter which relates to the affairs of an individual, where the publication of that matter would or might, in the opinion of the Secretary of State or (as the case may be) [the Authority], 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 Secretary of State or (as the case may be) [the Authority], seriously and prejudicially affect the interests of that body.

[(4) The [CMA] shall consult [the Authority] before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by [the Authority] under subsection (2) of this section.]

NOTES

Derivation

This section derived from the Water Act 1989, s 34.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): paras (a), (b) and words “as it may” immediately following them substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 43(1), (2).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-ss (2)–(4): words “The Authority”, “it” and “the Authority” in square brackets in each place they

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occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words "or a licence under Chapter 1A of that Part" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 43(1), (3).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): inserted by the Enterprise Act 2002, s 278(1), Sch 25, para 25(1), (9).

Date in force: 20 June 2003: see SI 2003/1397, art 2(1), Schedule; for transitional and transitory provisions see the Enterprise Act 2002, s 276, Sch 24, paras 2–6.

Sub-s (4): reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 91.

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

See Further

See further, in relation to the application of sub-s (1) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 14(5).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Powers to acquire and duties to provide information

202 Duties of undertakers to furnish the Secretary of State with information

(1) It shall be the duty of a company holding an appointment as a relevant undertaker to furnish the Secretary of State with all such information relating to any matter which—

(a) is connected with, or with any proposals relating to, the carrying out by that company of the functions of a relevant undertaker; or

(b) is material to the carrying out by the Secretary of State of any of his functions under this Act, any of the other consolidation Acts or the Water Act 1989,

as the Secretary of State may reasonably require.

[(1A) It shall be the duty of a company holding a licence under Chapter 1A of Part 2 of this Act to furnish the Secretary of State with all such information relating to any matter which—

(a) is connected with, or with any proposals relating to, the carrying on by that company of the activities authorised by the licence; or

(b) is material to the carrying out by the Secretary of State of any of his functions under this Act, any of the other consolidation Acts or the Water Act 1989,

as the Secretary of State may reasonably require.]

(2) Information required under this section shall be furnished in such form and manner, and be accompanied or supplemented by such explanations, as the Secretary of State may reasonably require.

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(3) The information which a company may be required to furnish to the Secretary of State under this section shall include information which, although it is not in the possession of that company or would not otherwise come into the possession of that company, is information which it is reasonable to require that company to obtain.

(4) A requirement for the purposes of this section shall be contained in a direction which—

(a) may describe the information to be furnished in such manner as the Secretary of State considers appropriate;

(b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time; and

(c) may be given to a particular company, to companies of a particular description or to all the companies holding appointments under Chapter I of Part II of this Act [or licences under Chapter 1A of that Part].

(5) The obligations of a relevant undertaker [or licensed water supplier] under this section shall be enforceable under section 18 above by the Secretary of State.

(6) In this section "the other consolidation Acts" means the Water Resources Act 1991, the Statutory Water Companies Act 1991, so much of the Land Drainage Act 1991 as confers functions on the Secretary of State with respect to [the Environment Agency] [or on the Welsh Ministers with respect to the NRBW] and the Water Consolidation (Consequential Provisions) Act 1991.

NOTES

Derivation

Sub-ss (1)–(5) derived from the Water Act 1989, s 32.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 44(1), (2).
Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4): in para (c) words "or licences under Chapter 1A of that Part" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 44(1), (3).
Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (5): words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 44(1), (4).
Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (6): words "the Environment Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 120.

Sub-s (6): words "or on the Welsh Ministers with respect to the NRBW" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 254.
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

See Further

See further, in relation to the application of sub-ss (1A), (5) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified

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Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 14(6).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

203 Power to acquire information for enforcement purposes

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

(a) a company that holds an appointment as a relevant undertaker, if of the opinion that Condition 1 is satisfied, or

(b) a person who holds a licence under Chapter 1A of Part 2, if of the opinion that Condition 2 is satisfied.

(1A) Condition 1 is that the company—

(a) may be contravening, or may have contravened, a condition of the appointment or a statutory or other requirement enforceable under section 18,

(b) may be causing or contributing to, or may have caused or contributed to, a contravention by another company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,

(c) may be causing or contributing to, or may have caused or contributed to, a contravention by a person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,

(d) has not met the standards prescribed under section 38(2) in connection with the provision of supplies of water, or

(e) has not met the standards prescribed under section 95(2) in connection with the provision of sewerage services.

(1B) Condition 2 is that the person—

(a) may be contravening, or may have contravened, a condition of the licence or a statutory or other requirement enforceable under section 18,

(b) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,

(c) may be causing or contributing to, or may have caused or contributed to, a contravention by another person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,

(d) has not met the standards prescribed under section 38ZA(2) in connection with the provision of water supplies, or

(e) has not met the standards prescribed under section 95ZA(2) in connection with the provision

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of sewerage services.

(1C) The notice may be served—

(a) on any person;

(b) for any purpose connected with powers under Chapter 2 of Part 2.]

(2) A notice under this subsection is a notice signed by the [Minister] or [the Authority] and—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to—

(i) the [Minister] or [the Authority]; or

(ii) any person appointed by the [Minister] or [the Authority] for the purpose,

any documents which are specified or described in the notice and are in that person's custody or under his control; or

(b) requiring that person, if he is carrying on a business, to furnish, at the time and place and in the form and manner specified in the notice, the [Minister] or [the Authority] with such information as may be specified or described in the notice.

(3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who, without reasonable excuse, fails to do anything required of him by a notice under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under subsection (2) above, the High Court may, on the application of the [Minister] or [the Authority], make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(7) Nothing in this section shall be construed as restricting any power of the Secretary of State or [the Authority] under section 202 above or the conditions of an appointment under Chapter I of Part II of this Act [or of a licence under Chapter 1A of that Part] to require a company holding such an appointment [or a person holding such a licence] to produce any document to [him or it] or to furnish [him or it] with any information.

[(8) The Minister" means—

(a) the Secretary of State, in respect of—

(i) any relevant undertaker whose area is wholly or mainly in England;

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(ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker;

(b) the Welsh Ministers, in respect of—

(i) any relevant undertaker whose area is wholly or mainly in Wales;

(ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker.

(9) In this section—

(a) references to the supply system of a water undertaker are to be construed in accordance with section 17B;

(b) references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(7).]

NOTES

Derivation

This section derived from the Water Act 1989, s 33.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (1A)–(1C): substituted, for sub-s (1) as originally enacted, by the Water Act 2014, s 36(1), (2).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(j).

Sub-s (2): word “Minister” in square brackets in each place it occurs substituted by the Water Act 2014, s 36(1), (3).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(j).

Sub-ss (1), (2), (6), (7): words “the Authority” and “him or it” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (6): word “Minister” in square brackets substituted by the Water Act 2014, s 36(1), (3).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(j).

Sub-s (7): words “or of a licence under Chapter 1A of that Part” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 45(1), (3)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (7): words “or a person holding such a licence” in square brackets substituted by the Water Act 2014, s 36(1), (4).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(j).

Sub-ss (8), (9): inserted by the Water Act 2014, s 36(1), (5).

Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(j).

See Further

See further, in relation to the application of sub-ss (1), (4), (5) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 14(7).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales

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(Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

204 Provision of information to sewerage undertakers with respect to trade effluent discharges

(1) The owner or occupier of any land on or under which is situated any sewer, drain, pipe, channel or outlet used or intended to be used for discharging any trade effluent into a sewer of a sewerage undertaker shall, when requested to do so by the undertaker—

(a) produce to the undertaker all such plans of the sewer, drain, pipe, channel or outlet as the owner or, as the case may be, occupier possesses or is able without expense to obtain;

(b) allow copies of the plans so produced by him to be made by, or under the directions of, the undertaker; and

(c) furnish to the undertaker all such information as the owner or, as the case may be, occupier can reasonably be expected to supply with respect to the sewer, drain, pipe, channel or outlet.

(2) A request by a sewerage undertaker for the purposes of this section shall be made in writing.

(3) Every person who fails to comply with this section shall be guilty of an offence and liable, on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Expressions used in this section and in Chapter III of Part IV of this Act have the same meanings in this section as in that Chapter; and, accordingly, section 139 above shall have effect for the purposes of this section as it has effect for the purposes of that Chapter.

NOTES

Derivation

Sub-ss (1), (2) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 9(1), (2), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, para 1; sub-s (3) derived from the Public Health (Drainage of Trade Premises) Act 1937, s 9(3), the Control of Pollution Act 1974, Sch 2, para 14, the Criminal Justice Act 1982, ss 38, 46.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

205 Exchange of metering information between undertakers

(1) Where—

(a) different services are provided in relation to the same premises by different [service providers];

(b) one of those [providers] has obtained a reading from a meter used in determining the amount of any charges fixed in relation to those premises;

(c) the charges in relation to those premises of another of those [providers] are fixed by reference to any matter to which the reading is relevant; and

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(d) that other [provider] has agreed to bear a reasonable proportion of the expenses of obtaining the reading together with the reasonable expenses of the disclosure of the reading to it,

it shall be the duty of the [provider] who obtained the reading to disclose the reading to the other [provider].

(2) Any dispute between a [service provider] and any other person (including another [such provider])—

(a) as to the terms to be contained in any agreement for the purposes of subsection (1)(d) above; or

(b) as to the amount of any expenses to be borne by any person under any such agreement,

shall be referred to the arbitration of a single arbitrator appointed by agreement between [the provider] and that person or, in default of agreement, by [the Authority].

[(3) The duties of a service provider under this section shall be enforceable under section 18 above by the Authority.

(4) For the purposes of this section, the following are service providers—

(a) any relevant undertaker; and

(b) any licensed water supplier

.]

NOTES

Derivation

Sub-ss (1), (3) derived from the Water Act 1989, Sch 10, para 4(1), (2); sub-s (2) derived from the Water Act 1989, Sch 10, para 5.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): in para (a) words “service providers” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 46(1), (2)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): in paras (b), (c) word “providers” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 46(1), (2)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): in para (d) word “provider” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 46(1), (2)(c).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (1): word “provider” in square brackets in both places it occurs substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 46(1), (2)(d).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words “service provider” in square brackets substituted by the Water Act 2003, s 101(1),

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Sch 8, paras 2, 46(1), (3)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words “such provider” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 46(1), (3)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words “the provider” in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 46(1), (3)(c).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-ss (3), (4): substituted, for sub-s (3) as originally enacted, by the Water Act 2003, s 101(1), Sch 8, paras 2, 46(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

See Further

See further, in relation to the application of sub-s (4) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 14(8).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this section are transferred to the National Assembly for Wales with respect to both water supply and sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

Restriction on disclosure of information

206 Restriction on disclosure of information

(1) Subject to the following provisions of this section, no information with respect to any particular business which—

(a) has been obtained by virtue of any of the provisions of this Act; and

(b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) No person shall disclose any information furnished to him under section . . . 204 above or under Chapter III of Part IV of this Act except—

(a) with the consent of the person by whom the information was furnished;

(b) in connection with the execution of that Chapter;

(c) for the purposes of any proceedings arising under that Chapter (including any appeal, application to the Secretary of State or [the Authority] or an arbitration);

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(d) for the purposes of any criminal proceedings (whether or not so arising); or

(e) for the purposes of any report of any proceedings falling within paragraph (c) or (d) above.

(3) Subsection (1) above does not apply to any disclosure of information which is made—

(a) for the purpose of facilitating the carrying out by the Secretary of State, the Minister, [the Environment Agency, [the NRBW,] the Scottish Environment Protection Agency], [the Authority][, the Council], the [CMA] or a county council or local authority of any of his, its or, as the case may be, their functions by virtue of this Act, any of the other consolidation Acts[, the Water Act 1989, Part I or IIA of the Environmental Protection Act 1990[, the Environment Act 1995[, regulations under section 2 of the Pollution Prevention and Control Act 1999,] [the Water Act 2003 or the Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903)]]];

(b) for the purpose of facilitating the performance by a relevant undertaker of any of the duties imposed on it by or under this Act, any of the other consolidation Acts[, the Water Act 1989 or the Water Act 2003] [or by a licensed water supplier of any of the duties imposed on it by or under this Act];

(c) in pursuance [of any duty imposed by section 27H above or] section 197(1)(a) or (2) or [203(1), (1A), (2) or (2A)] of the Water Resources Act 1991 (information about water flow and pollution);

[(ca) for the purpose of complying with a request under section 14 of the Flood and Water Management Act 2010;]

(d) for the purpose of facilitating the carrying out by any person mentioned in Part I of Schedule 15 to this Act of any of his functions under any of the enactments or instruments specified in Part II of that Schedule;

[(e) for the purpose of enabling or assisting the Secretary of State, the Treasury[, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England] to exercise any powers conferred by or under the Financial Services and Markets Act 2000 or by the enactments relating to companies or insolvency;

(ea) for the purpose of enabling or assisting any inspector appointed under enactments relating to companies to carry out his functions;]

(f) for the purpose of enabling an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 to carry out its functions as such;

(g) for the purpose of facilitating the carrying out by . . . the Health and Safety Executive of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority, within the meaning of Part I of the Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;

[(ga) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;]

(h) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;

(i) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

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(j) for the purposes of any civil proceedings brought under or by virtue of this Act, any of the other consolidation Acts, the Water Act 1989[, the Water Act 2003] or any of the enactments or instruments specified in Part II of Schedule 15 to this Act, or of any arbitration under this Act, any of the other consolidation Acts[, the Water Act 1989 or the Water Act 2003]; or

(k) in pursuance of [an] [EU] obligation.

(4) Nothing in subsection (1) above shall be construed—

(a) as limiting the matters which may be published under section [38A, 95A or] 201 above or may be included in, or made public as part of, a report of [the Environment Agency, [the NRBW,] the Scottish Environment Protection Agency], [the Authority], [the Council (or any regional committee)] or the [CMA] under any provision of this Act[, Part I or IIA of the Environmental Protection Act 1990, the Water Resources Act 1991[, the Environment Act 1995[, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003]]]; or

(b) as applying to any information which has been so published or has been made public as part of such a report or to any information exclusively of a statistical nature.

(5) Subject to subsection (6) below, nothing in subsection (1) above shall preclude the disclosure of information—

(a) if the disclosure is of information relating to a matter connected with the carrying out of the functions of a relevant undertaker[, or with the carrying on by a licensed water supplier of activities under its licence,] and is made by one Minister of the Crown or government department to another; or

(b) if the disclosure is for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the Secretary of State to discharge any functions which are specified in the order.

(6) The power to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and where such an order designates an authority for the purposes of paragraph (b) of that subsection, the order may—

(a) impose conditions subject to which the disclosure of information is permitted by virtue of that paragraph; and

(b) otherwise restrict the circumstances in which disclosure is so permitted.

(7) Any person who discloses any information in contravention of the preceding provisions of this section shall be guilty of an offence.

(8) A person who is guilty of an offence under this section by virtue of subsection (1) above shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(9) A person who is guilty of an offence under this section by virtue of subsection (2) above shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both.

[(9A) Information obtained by [the Authority] in the exercise of functions which are exercisable

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concurrently with [the CMA] under Part I of the Competition Act 1998 is subject to [Part 9 of the Enterprise Act 2002 (Information)] and not to subsections (1) to (9) of this section.]

(10) In this section "the other consolidation Acts" means the Water Resources Act 1991, the Statutory Water Companies Act 1991, the Land Drainage Act 1991 and the Water Consolidation (Consequential Provisions) Act 1991.

NOTES

Derivation

Sub-ss (1), (3) derived from the Water Act 1989, s 174(1), (2), and give effect to Law Commission Recommendation No 11, Cmnd 1483; sub-s (2) derived from the Public Health Act 1961, s 68(1), the Water Act 1989, Sch 9, para 8; sub-ss (4)–(6) derived from the Water Act 1989, s 174(4), (6), (7); sub-ss (7), (8) derived from the Water Act 1989, s 174(5); sub-s (9) derived from the Public Health Act 1961, s 68(2), the Criminal Justice Act 1982, ss 38, 46.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words omitted repealed by the Environment Act 1995, s 120, Sch 22, para 121(1), Sch 24.

Sub-ss (2)–(4), (9A): words "the Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): in para (a) words "the Environment Agency, the Scottish Environment Protection Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 121(2).

Sub-s (3): in para (a) words "the NRBW," in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 255(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): in para (a) words ", the Council" in square brackets inserted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (5)(a)(i).

Date in force: 1 October 2005: see SI 2005/2714, art 2(l)(v)(bb), (cc).

Sub-s (3): in para (a) reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 92(1), (2).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (3): in para (a) words in square brackets beginning with the words ", the Water Act 1989" substituted by the Environment Act 1995, s 120, Sch 22, para 121(2).

Sub-s (3): in para (a) words in square brackets beginning with the words ", the Environment Act 1995" substituted by the Pollution Prevention and Control Act 1999, s 6(1), Sch 2, para 7.

Date in force: 21 March 2000: see SI 2000/800, art 2.

Sub-s (3): in para (a) words in square brackets beginning with the words ", regulations under section 2" substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (5)(a)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): in para (a) words "the Water Act 2003 or the Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903)" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 255(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): in para (b) words ", the Water Act 1989 or the Water Act 2003" in square brackets

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substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (5)(a)(iii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): in para (b) words from "or by a licensed" to "under this Act" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 47(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): in para (c) words "of any duty imposed by section 27H above or" in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (5)(a)(iv).

Date in force: 1 October 2005: see SI 2005/2714, art 2(l)(v)(bb), (cc).

Sub-s (3): in para (c) words "203(1), (1A), (2) or (2A)" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 47(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (3): para (ca) inserted by the Flood and Water Management Act 2010, s 31, Sch 2, para 50.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (h).

Sub-s (3): paras (e), (ea) substituted, for para (e) as originally enacted, by SI 2001/3649, art 328.

Date in force: 1 December 2001: see SI 2001/3649, art 1.

Sub-s (3): in para (e) words from ", the Financial Conduct Authority" to "Bank of England" in square brackets substituted by the Financial Services Act 2012, s 114(1), Sch 18, Pt 2, para 72.

Date in force: 1 April 2013: see SI 2013/423, art 3, Schedule.

Sub-s (3): in para (g) words omitted repealed by SI 2008/960, art 22, Sch 3.

Date in force: 1 April 2008: see SI 2008/960, art 1; for transitional provisions see art 21, Sch 2 thereof.

Sub-s (3): para (ga) inserted by the Energy Act 2013, s 116(1), Sch 12, Pt 5, para 64.

Date in force: 1 April 2014: see SI 2014/251, art 4(1).

Sub-s (3): in para (j) words ", the Water Act 2003" in square brackets inserted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (5)(a)(v)(a).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): in para (j) words ", the Water Act 1989 or the Water Act 2003" in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (5)(a)(v)(b).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): in para (k) word "an" in square brackets substituted by SI 2011/1043, art 6(3).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Sub-s (3): in para (k) reference to "EU" in square brackets substituted by SI 2011/1043, art 6(1)(e).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Sub-s (4): in para (a) words "38A, 95A or" in square brackets inserted by the Competition and Service (Utilities) Act 1992, s 56(6), Sch 1, para 27.

Sub-s (4): in para (a) words "the Environment Agency, the Scottish Environment Protection Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 121(3).

Sub-s (4): in para (a) words "the NRBW," in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 255(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): in para (a) words "the Council (or any regional committee)" in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (5)(b)(i).

Date in force: 1 October 2005: see SI 2005/2714, art 2(l)(v)(bb), (cc).

Sub-s (4): in para (a) reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 92(1), (2).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Sub-s (4): in para (a) words in square brackets beginning with the words ", Part I or IIA" substituted

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by the Environment Act 1995, s 120, Sch 22, para 121(3).
Sub-s (4): in para (a) words in square brackets beginning with the words ", the Environment Act 1995" substituted by the Pollution Prevention and Control Act 1999, s 6(1), Sch 2, para 7.
Date in force: 21 March 2000: see SI 2000/800, art 2.
Sub-s (4): in para (a) words ", regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003" in square brackets substituted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (5)(b)(ii).
Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.
Sub-s (5): in para (a) words from ", or with the carrying" to "under its licence," in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 47(1), (4).
Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.
Sub-s (9A): inserted by the Competition Act 1998, s 54(3), Sch 10, para 13(9).
Date in force: 1 March 2000: see SI 2000/344, art 2, Schedule.
Sub-s (9A): words "the CMA" in square brackets substituted by virtue of SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 92(1), (3).
Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.
Sub-s (9A): words "Part 9 of the Enterprise Act 2002 (Information)" in square brackets substituted by the Enterprise Act 2002, s 278(1), Sch 25, para 25(1), (10)(b).
Date in force: 20 June 2003: see SI 2003/1397, art 2, Schedule; for transitional and transitory provisions and savings see the Enterprise Act 2002, s 276, Sch 24, paras 2–19.

See Further

See further, in relation to the extension of disclosure powers under sub-s (3) above: the Anti-terrorism, Crime and Security Act 2001, s 17, Sch 4, Pt 1, para 31.
See further, in relation to summary offences no longer punishable with imprisonment: the Criminal Justice Act 2003, s 280(1), Sch 25, para 90.

Transfer of Functions

See further in relation to the transfer of functions under this section, so far as exercisable in relation to Wales, to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Provision of false information

207 Provision of false information

(1) If any person, in furnishing any information or making any application under or for the purposes of any provision of this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(2) Proceedings for an offence under subsection (1) above shall not be instituted except by or with the consent of the Secretary of State. . . or the Director of Public Prosecutions.

NOTES

Derivation

Sub-s (1) derived from the Water Act 1945, s 45, the Water Act 1989, s 175(1), Sch 25, para 7(8), and gives effect to Law Commission Recommendation No 12, Cmnd 1483; sub-s (2) derived from the Water Act 1989, s 175(2).

Initial Commencement

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Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words omitted repealed by SI 2002/794, art 5(2), Sch 2.

Date in force: 27 March 2002: see SI 2002/794, art 1(2).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), the functions under this section shall be exercisable by the National Assembly for Wales concurrently with the Minister of the Crown by whom they are exercisable.

Part VIII
Miscellaneous and Supplemental

Miscellaneous

208 Directions in the interests of national security

(1) The Secretary of State may, after consultation with a relevant undertaker [or licensed water supplier], give to that undertaker [or supplier (as the case may be)] such directions of a general character as appear to the Secretary of State to be requisite or expedient in the interests of national security or for the purpose of mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security or for the purpose of mitigating the effects of any civil emergency which has occurred or may occur, he may, after consultation with a relevant undertaker [or licensed water supplier], give to that undertaker [or supplier (as the case may be)] a direction requiring it to do, or not to do, a particular thing specified in the direction.

(3) It shall be the duty of a relevant undertaker [or licensed water supplier], notwithstanding any other duty imposed on it (whether or not by or under this Act), to comply with any direction given to it by the Secretary of State under this section; and the duty of a relevant undertaker [or licensed water supplier] to comply with any such direction shall be enforceable under section 18 above by the Secretary of State.

[(3A) The Secretary of State may, after consultation with the Council, give to the Council such directions of a general character as appear to the Secretary of State to be requisite or expedient—

(a) in the interests of national security; or

(b) in connection with any civil emergency which may occur.

(3B) If it appears to the Secretary of State to be requisite or expedient to do so—

(a) in the interests of national security; or

(b) in connection with any civil emergency which has occurred or may occur,

he may, after consultation with the Council, give to the Council a direction requiring it to do, or not to do, a particular thing specified in the direction.

(3C) The Council shall comply with any direction given to it by the Secretary of State under this section.]

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(4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of the opinion that disclosure of the direction is against the interests of national security.

(5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security.

(6) Any person who discloses any matter in contravention of subsection (5) above shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(7) Any reference in this section to a civil emergency is a reference to any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely, in relation to any area—

(a) so to disrupt water supplies or sewerage services; or

(b) to involve such destruction of or damage to life or property in that area,

as seriously and adversely to affect all the inhabitants of that area, or a substantial number of them, whether by depriving them of any of the essentials of life or otherwise.

NOTES

Derivation

This section derived from the Water Act 1989, s 170(1)–(6), (9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-ss (1), (2): words “or licensed water supplier” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 48(1), (2)(a).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-ss (1), (2): words “or supplier (as the case may be)” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 48(1), (2)(b).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (3): words “or licensed water supplier” in square brackets in both places they occur inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 48(1), (3).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-ss (3A)–(3C): inserted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (6).

Date in force: 1 October 2005: see SI 2005/2714, art 2(l)(v)(aa), (cc).

See Further

See further, in relation to the application of sub-ss (1)–(3) above, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 15.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides

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that, subject to art 2(b) to (f) of the 1999 Order, the functions under this section of giving directions for the purpose of mitigating the effects of any civil emergency and the function of enforcing such directions are transferred to the National Assembly for Wales in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales, and further provides that the other functions under this section shall be exercisable by the Assembly concurrently with the Secretary of State in relation to any such undertakers.

209 Civil liability of undertakers for escapes of water etc

(1) Where an escape of water, however caused, from a pipe vested in a water undertaker causes loss or damage, the undertaker shall be liable, except as otherwise provided in this section, for the loss or damage.

(2) A water undertaker shall not incur any liability under subsection (1) above if the escape was due wholly to the fault of the person who sustained the loss or damage or of any servant, agent or contractor of his.

(3) A water undertaker shall not incur any liability under subsection (1) above in respect of any loss or damage for which the undertaker would not be liable apart from that subsection and which is sustained—

(a) by [the Environment Agency], [the NRBW,] a relevant undertaker or any statutory undertakers, within the meaning of section 336(1) of the Town and Country Planning Act 1990;

(b) by any public gas supplier within the meaning of Part I of the Gas Act 1986 or the holder of a licence under section 6(1) of the Electricity Act 1989;

(c) by any highway authority; or

(d) by any person on whom a right to compensation is conferred by section 82 of the New Roads and Street Works Act 1991.

(4) The Law Reform (Contributory Negligence) Act 1945, the Fatal Accidents Act 1976 and the Limitation Act 1980 shall apply in relation to any loss or damage for which a water undertaker is liable under this section, but which is not due to the undertaker's fault, as if it were due to its fault.

(5) Nothing in subsection (1) above affects any entitlement which a water undertaker may have to recover contribution under the Civil Liability (Contribution) Act 1978; and for the purposes of that Act, any loss for which a water undertaker is liable under that subsection shall be treated as if it were damage.

(6) Where a water undertaker is liable under any enactment or agreement passed or made before 1st April 1982 to make any payment in respect of any loss or damage the undertaker shall not incur liability under subsection (1) above in respect of the same loss or damage.

(7) In this section "fault" has the same meaning as in the Law Reform (Contributory Negligence) Act 1945.

(8) Until the coming into force of section 82 of the New Roads and Street Works Act 1991, subsection (3) above shall have effect as if for paragraph (d) there were substituted the following paragraphs—

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"(d) by any bridge authority, bridge managers, street authority or street managers within the meaning of the Public Utilities Street Works Act 1950; or

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(e) by any person on whom a right to compensation under section 26 of that Act of 1950 is conferred.";

[ISOE

but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing section 82 of that Act into force on different days for different purposes (including the purposes of this section).

NOTES

Derivation

Sub-s (1) derived from the Water Act 1981, s 6(1), the Water Act 1989, Sch 25, para 63; sub-ss (2), (4)–(6) derived from the Water Act 1981, s 6(2), (4)–(6); sub-s (3) derived from the Water Act 1981, s 6(3), (7), the Gas Act 1986, Sch 7, para 2(6), the Electricity Act 1989, Sch 16, para 1(5), the Water Act 1989, Sch 25, para 63, the Planning (Consequential Provisions) Act 1991, Sch 2, para 46, the New Roads and Street Works Act 1991, Sch 8, para 110; sub-ss (7), (8) derived from the Water Act 1981, s 6(7).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): in para (a) words "the Environment Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 122.

Sub-s (3): in para (a) words "the NRBW," in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 256.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Modification

Public gas supplier: by virtue of the Gas Act 1995, s 16(1), Sch 4, para 2(2)(m), the reference to a public gas supplier in sub-s (3)(b) has effect as if it was reference to a public gas transporter. See further, the note "Public gas transporter" below.

Public gas transporter: the Utilities Act 2000, s 76(7) provides that a reference to a public gas transporter shall have effect as a reference to a gas transporter.

[209A Rights of tenants in relation to metering]

[(1) Subject to subsection (3) below, no express or implied term of any tenancy is to be regarded—

(a) as excluding or restricting the exercise by the tenant of any right to give—

(i) a measured charges notice under section 144A above, or

(ii) any consent for the purposes of section 144B(2)(a)(ii) above,

(b) as preventing the installation or connection, in pursuance of such a notice or consent given by the tenant, of a meter for use in determining the charges which may be fixed in relation to water supplied to the premises comprised in the tenancy, or

(c) as requiring any consent to be obtained in relation to such installation or connection.

(2) In subsection (1) above "tenancy" includes a licence which is treated as a tenancy by virtue of section 79(3) of the Housing Act 1985; and references to a "tenant" are to be construed accordingly.

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(3) Subsection (1) above does not apply where the tenancy is a fixed term tenancy for a term of less than six months; and for this purpose "fixed term tenancy" means any tenancy other than a periodic tenancy.]

NOTES

Extent

This section does not extend to Scotland: see the Water Industry Act 1999, s 17(5)(a).

Amendment

Inserted by the Water Industry Act 1999, s 11.

Date in force: 1 April 2000: see SI 1999/3440, art 3(c).

Offences

210 Offences by bodies corporate

(1) Where a body corporate is guilty of an offence under this Act and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

NOTES

Derivation

This section derived from the Water Act 1989, s 177, and gives effect to Law Commission Recommendation No 13, Cmnd 1483.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

211 Limitation on right to prosecute in respect of sewerage offences

Proceedings in respect of an offence created by or under any of the relevant sewerage provisions shall not, without the written consent of the Attorney-General, be taken by any person other than—

(a) a party aggrieved;

(b) a sewerage undertaker;

or

(c) a body whose function it is to enforce the provisions in question.

NOTES

Derivation

This section derived from the Public Health Act 1936, s 298, the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, para 1.

Initial Commencement

Specified date

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Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Judicial disqualification

212 Judicial disqualification

No judge of any court or justice of the peace shall be disqualified from acting in relation to any proceedings to which a relevant undertaker is a party by reason only that he is or may become liable to pay a charge to that undertaker in respect of any service that is not the subject-matter of the proceedings.

NOTES

Derivation

This section derived from the Water Act 1989, s 182.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this section, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 16(1).

Powers to make regulations

213 Powers to make regulations

(1) The powers of the Secretary of State to make regulations under this Act shall be exercisable by statutory instrument subject (except in the case of regulations under section 8(1) or (2) [*or 17D(8)*] [, 17D(8), 36A] [or 105A] above) to annulment in pursuance of a resolution of either House of Parliament.

[(1A) But on the occasion of the first exercise by the Secretary of State of the power to make regulations under each of sections 89 and 90 above, the instrument

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

(1B) The power of the Assembly to make regulations under section 89 above shall be exercisable by statutory instrument.]

(2) Subject to subsection (3) below, the provisions of any regulations made by the Secretary of State under this Act may include—

(a) provision for any duty or other requirement imposed by the regulations on a water undertaker or sewerage undertaker [or licensed water supplier] to be enforceable under section 18 above by the Secretary of State, by [the Authority] or by either of them;

(b) provision, where such a duty or requirement is so enforceable by either of them, for enforcement by [the Authority] to be subject to such consent or authorisation as may be prescribed;

(c) provision which, in relation to the furnishing of any information or the making of any application under the regulations, makes provision corresponding to section 207 above;

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(d) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;

[(dd) as to awarding costs or expenses of proceedings in any determination under the regulations, including the amount of the costs or expenses and the enforcement of the awards;]

(e) different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(f) such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

[(2A) Such regulations may include provision—

(a) for the determination of questions of fact or of law which may arise in giving effect to the regulations;

(b) for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions;

(c) as to the mode of proof of any matter;

(d) as to parties and their representation; and

(e) for the right to appear before and be heard by the Secretary of State, [the Authority] and other authorities.

(2B) Any such regulations which prescribe a period within which things are to be done may provide for extending the period so prescribed.]

(3) Except to the extent that they would do so apart from this section, the power to make regulations under section 113, 125 or 126 above or under section 214 below or Schedule 8 to this Act—

(a) shall not include the powers conferred by virtue of paragraphs (a) to (d) of subsection (2) above; and

(b) in the case of the power to make regulations under section 214 below, shall also not include the powers conferred by virtue of paragraphs (e) and (f) of that subsection.

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, s 319, the Statutory Instruments Act 1946, ss 1(2), 4(3), 5(2), the Control of Pollution Act 1974, s 104(1), the Water Act 1989, s 185(1); sub-s (2) derived from the Control of Pollution Act 1974, s 104(1), the Water Act 1989, s 185(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (1): words “or 17D(8)” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 49(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (1): words “or 17D(8)” in italics repealed and subsequent references in square brackets

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substituted by the Flood and Water Management Act 2010, s 35(2).

Date in force (for certain purposes): 1 October 2010: see SI 2010/2169, art 4, Schedule.

Date in force (for remaining purposes): to be appointed: see the Flood and Water Management Act 2010, s 49(3)(d), (e).

Sub-s (1): words "or 105A" in square brackets inserted by the Water Act 2003, s 101(1), Sch 7, Pt 3, para 39(1), (3).

Date in force: 1 April 2007: see SI 2007/1021, art 2(d).

Sub-ss (1A), (1B): inserted by the Water Act 2003, s 58(1), (8).

Date in force (in relation to England in so far as relating to sub-s (1A) and the Water Industry Act 1991, ss 89(1), (2)(b), (d), (3), (5)(b), 90(3)): 18 February 2005: see SI 2005/344, art 2.

Date in force (in relation to England for remaining purposes): 25 February 2009: see SI 2009/359, art 2(c), (f).

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Sub-s (2): in para (a) words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 49(1), (3).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-ss (2), (2A): words "the Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Sub-s (2): para (dd) inserted by the Competition and Service (Utilities) Act 1992, s 56(6), Sch 1, para 28.

Sub-ss (2A), (2B): inserted by the Competition and Service (Utilities) Act 1992, s 52.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under this section shall be exercisable by the National Assembly for Wales to the same extent as the powers, duties and other provisions to which this section applies are exercisable by the Assembly.

Subordinate Legislation

Water (Compulsory Works Powers) (Notice) Regulations 1999, SI 1999/221 (made under sub-s (2)(e)).

Water Supply (Water Fittings) Regulations 1999, SI 1999/1148 (made under sub-s (2)).

Water Supply (Water Fittings) (Amendment) Regulations 1999, SI 1999/1506 (made under sub-s (2)).

Water Industry (Charges) (Vulnerable Groups) Regulations 1999, SI 1999/3441 (made under sub-s (2)).

Water Industry (Prescribed Conditions) Regulations 1999, SI 1999/3442 (made under sub-s (2)).

Water Industry (Charges) (Vulnerable Groups) (Amendment) Regulations 2000, SI 2000/519 (made under sub-s (2)).

Water Supply (Water Quality) Regulations 2000, SI 2000/3184 (made under sub-s (2)).

Water Supply (Water Quality) (Amendment) Regulations 2001, SI 2001/2885 (made under sub-s (2)).

Water Industry (Charges) (Vulnerable Groups) (Amendment) Regulations 2003, SI 2003/552.

Water Industry (Prescribed Conditions) (Undertakers Wholly or Mainly in Wales) Regulations 2004, SI 2004/701 (made under sub-s (2)).

Water Mergers (Modification of Enactments) Regulations 2004, SI 2004/3202 (made under sub-s (2)).

Water Mergers (Determination of Turnover) Regulations 2004, SI 2004/3206 (made under sub-s (2)(d), (e)).

Water Industry (Charges) (Vulnerable Groups) (Amendment) Regulations 2005, SI 2005/59 (made under sub-s (2)).

Water Supply Licence (Application) Regulations 2005, SI 2005/1638 (made under sub-ss (2)(d), (e), (f)).

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Water Resources Management Plan Regulations 2007, SI 2007/727 (made under sub-s (2)(e), (f)).
Water Industry (Prescribed Conditions) (Amendment) Regulations 2007, SI 2007/2457 (made under sub-s (2)).
Water Supply (Water Quality) Regulations 2000 (Amendment) Regulations 2007, SI 2007/2734 (made under sub-s (2)).
Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, SI 2008/594 (made under sub-ss (2)(d), (e), (2A)(a)–(c), (2B)).
Private Water Supplies Regulations 2009, SI 2009/3101 (made under sub-s (2)).
Private Water Supplies (Wales) Regulations 2010, SI 2010/66 (made under sub-s (2)).
Private Water Supplies (Wales) (Amendment) Regulations 2010, SI 2010/147 (made under sub-s (2)).
Water Supply Regulations 2010, SI 2010/991 (made under sub-s (2)).
Water Supply (Water Quality) Regulations 2010, SI 2010/994 (made under sub-s (2)).
Private Water Supplies (Wales) (Amendment) (No 2) Regulations 2010, SI 2010/1384 (made under sub-s (2)).
Water Supply (Water Quality) (Amendment) Regulations 2011, SI 2011/14 (made under sub-s (2)).
Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582 (made unsder sub-ss (2)(a), (d), (e), (f)).
Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014, SI 2014/3156 (made under sub-s (2)(f)).
Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2015, SI 2015/22 (made under sub-s (2)(d), (dd)).
Water Industry (Charges) (Vulnerable Groups) (Consolidation) Regulations 2015, SI 2015/365 (made under sub-s (2)).

214 Power to prescribe forms

(1) The Secretary of State may by regulations prescribe the form of any notice or other document to be used for any of the purposes of the relevant sewerage provisions.

(2) If forms are prescribed under this section, those forms or forms to the like effect may be used in all cases to which those forms are applicable.

NOTES

Derivation

This section derived from the Public Health Act 1936, s 283(2), the Public Health (Drainage of Trade Premises) Act 1937, s 14(2), the Public Health Act 1961, s 1(3), the Water Act 1973, s 14(2), the Water Act 1989, s 189, Sch 8, paras 1, 3(7), 4(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under this section shall be exercisable by the National Assembly for Wales to the same extent as the powers, duties and other provisions to which this section applies are exercisable by the Assembly.

Local inquiries

215 Local inquiries

(1) The Secretary of State may cause a local inquiry to be held in any case where he is authorised by

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any of the relevant sewerage provisions to determine any difference, to make any order, to give any consent or otherwise to act under any of those provisions.

(2) Subject to subsection (3) below, subsections (2) to (5) of section 250 of the Local Government Act 1972 (which contain supplementary provisions with respect to local inquiries held in pursuance of that section) shall apply to local inquiries under subsection (1) above or any of the other provisions of this Act as they apply to inquiries under that section.

(3) Subsection (4) of the said section 250 shall apply in accordance with subsection (2) above in relation to such local inquiries under this Act as are held with respect to any matter affecting the carrying out of any function of [the Environment Agency] [or the NRBW] as if the reference to a local authority in that subsection included a reference to [the Environment Agency] [or, as the case may be, the NRBW].

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, s 318; sub-ss (2), (3) derived from the Water Act 1989, s 181, Sch 8, para 2(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (3): words “the Environment Agency” in square brackets in both places they occur substituted by the Environment Act 1995, s 120, Sch 22, para 123.

Sub-s (3): words “or the NRBW” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 257(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): words “or, as the case may be, the NRBW” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 257(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under this section shall be exercisable by the National Assembly for Wales to the same extent as the powers, duties and other provisions to which this section applies are exercisable by the Assembly.

Construction of Act

216 Provisions relating to the service of documents

(1) Any document required or authorised by virtue of this Act to be served on any person may be served—

(a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or

(b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or

(c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control of management of the partnership business.

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(2) For the purposes of this section and section 7 of the Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—

(a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body;

(b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.

(4) Where under any provision of this Act any document is required to be served on the owner, on a lessee or on the occupier of any premises then—

(a) if the name or address of the owner, of the lessee or, as the case may be, of the occupier of the premises cannot after reasonable inquiry be ascertained; or

(b) in the case of service on the occupier, if the premises appear to be or are unoccupied,

that document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

(5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

NOTES

Derivation

This section derived from the Water Act 1989, s 187, and gives effect to Law Commission Recommendation No 14, Cmnd 1483.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

217 Construction of provision conferring powers by reference to undertakers' functions

(1) The purposes to which this section applies shall be the construction of any enactment which, by reference to the functions of a relevant undertaker, confers any power on or in relation to that undertaker.

(2) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include joining with or acting on behalf of—

(a) the [Environment Agency] [or the NRBW];

(b) one or more other relevant undertakers; or

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(c) the [Environment Agency] [or the NRBW] and one or more other such undertakers,

for the purpose of carrying out any works or acquiring any land which at least one of the bodies with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of that body's functions under any enactment or of any function which is taken to be a function of that body for the purposes to which this section or section 3 of the Water Resources Act 1991 (functions of [Environment Agency] for certain purposes) applies.

(3) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the protection against pollution—

(a) of any waters, whether on the surface or underground, which belong to the [Environment Agency] [or the NRBW] or any water undertaker or from which the [Environment Agency] [or the NRBW] or any water undertaker is authorised to take water;

(b) without prejudice to paragraph (a) above, of any reservoir which belongs to or is operated by the [Environment Agency] [or the NRBW] or any water undertaker or which the [Environment Agency] [or the NRBW] or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and

(c) of any underground strata from which the [Environment Agency] [or the NRBW] or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the Water Resources Act 1991.

(4) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the furtherance of research into matters in respect of which functions are conferred by or under this Act, the other consolidation Acts or the Water Act 1989 on the [Environment Agency], [on the NRBW,] on water undertakers or on sewerage undertakers.

(5) For the purposes to which this section applies the functions of every relevant undertaker shall be taken to include the provision of houses and other buildings for the use of persons employed by that undertaker and the provision of recreation grounds for persons so employed.

(6) For the purposes to which this section applies the functions of every water undertaker shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of, or in connection with, the carrying out of any other function of that undertaker.

(7) For the purposes to which this section applies the functions of every water undertaker shall be taken to include the doing of anything in pursuance of any arrangements under section 20 of the Water Resources Act 1991 between that undertaker and the [Environment Agency] [or the NRBW].

(8) In this section "the other consolidation Acts" has the same meaning as in section 206 above.

NOTES

Derivation

Sub-ss (1)–(7) derived from the Water Act 1989, s 188.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Sub-s (2): words "Environment Agency" in square brackets in each place they occur substituted by the Environment Act 1995, s 120, Sch 22, para 124.

Sub-s (2): in paras (a), (c) words "or the NRBW" in square brackets inserted by SI 2013/755, art

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4(1), Sch 2, Pt 1, paras 223, 258(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): in paras (a)–(c) words “Environment Agency” in square brackets in each place they occur substituted by the Environment Act 1995, s 120, Sch 22, para 124.

Sub-s (3): in paras (a)–(c) words “or the NRBW” in square brackets in each place they occur inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 258(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (4): words “Environment Agency” in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 124.

Sub-s (4): words “on the NRBW,” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 258(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (7): words “Environment Agency” in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 124.

Sub-s (7): words “or the NRBW” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 258(1), (5).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

218 Meaning of “domestic purposes” in relation to water supply

(1) Subject to the following provisions of this section, in this Act references to domestic purposes, in relation to a supply of water to any premises or in relation to any cognate expression, are references to the drinking, washing, cooking, central heating and sanitary purposes for which water supplied to those premises may be used.

(2) Where the whole or any part of the premises are or are to be occupied as a house, those purposes shall be taken to include—

(a) the purposes of a profession carried on in that house or, where—

(i) that house and another part of the premises are occupied together; and

(ii) the house comprises the greater part of what is so occupied,

in that other part; and

(b) such purposes outside the house (including the washing of vehicles and the watering of gardens) as are connected with the occupation of the house and may be satisfied by a supply of water drawn from a tap inside the house and without the use of a hosepipe or similar apparatus.

(3) No such reference to domestic purposes shall be taken to include a reference—

(a) to the use of a bath having a capacity, measured to the centre line of overflow or in such other manner as may be prescribed, of more than two hundred and thirty litres;

(b) to the purposes of the business of a laundry; or

(c) to any purpose of a business of preparing food or drink for consumption otherwise than on the premises.

NOTES

Derivation

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Sub-ss (1), (2) derived from the Water Act 1989, s 189(2), and give effect to Law Commission Recommendation No 21, Cmnd 1483; sub-s (3) derived from the Water Act 1989, s 189(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

219 General interpretation

(1) In this Act, except in so far as the context otherwise requires—

"accessories", in relation to a water main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, settling tanks, wash-out pipes, pumps, ferrules or stopcocks for the main, sewer or other pipe, or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it, but does not include any [electronic communications apparatus] unless it—

(a) is or is to be situated inside or in the close vicinity of the main, sewer or other pipe or inside or in the close vicinity of another accessory for it; and

(b) is intended to be used only in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it;

"analyse", in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

["the Assembly" means the National Assembly for Wales;]

["the Authority" means the Water Services Regulation Authority;]

["the CMA" means the Competition and Markets Authority;]

"conservancy authority" means any person who has a duty or power under any enactment to conserve, maintain or improve the navigation of a tidal water, and is not a harbour authority or navigation authority;

"contravention" includes a failure to comply, and cognate expressions shall be construed accordingly;

["the Council" means the Consumer Council for Water;]

"customer or potential customer", in relation to a company holding an appointment under Chapter I of Part II of this Act, means—

(a) any person for or to whom that company provides any services in the course of carrying out the functions of a water undertaker or sewerage undertaker [(other than a licensed water supplier)]; or

(b) any person who might become such a person on making an application for the purpose to the company;

"damage", in relation to individuals, includes death and any personal injury, including any disease or impairment of physical or mental condition;

. . .

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“disposal”—

(a) in relation to land or any interest or right in or over land, includes the creation of such an interest or right and a disposal effected by means of the surrender or other termination of any such interest or right; and

(b) in relation to sewage, includes treatment;

and cognate expressions shall be construed accordingly;

“disposal main” means (subject to subsection (2) below) any outfall pipe or other pipe which—

(a) is a pipe for the conveyance of effluent to or from any sewage disposal works, whether of a sewerage undertaker or of any other person; and

(b) is not a public sewer;

“domestic purposes”, except in relation to sewers, shall be construed in accordance with section 218 above;

“drain” means (subject to subsection (2) below) a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage;

“effluent” means any liquid, including particles of matter and other substances in suspension in the liquid;

“enactment” includes an enactment contained in this Act or in any Act passed after this Act;

“engineering or building operations”, without prejudice to the generality of that expression, includes—

(a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and

(b) the installation, modification or removal of any machinery or apparatus;

“financial year” means the twelve months ending with 31st March;

“functions”, in relation to a relevant undertaker, means the functions of the undertaker under or by virtue of any enactment and shall be construed subject to section 217 above;

“harbour authority” means a person who is a harbour authority within the meaning of [Chapter II of Part VI of the Merchant Shipping Act 1995] and is not a navigation authority;

“highway” and “highway authority” have the same meanings as in the Highways Act 1980;

“house” means any building or part of a building which is occupied as a dwelling-house, whether or not a private dwelling-house, or which, if unoccupied, is likely to be so occupied;

“information” includes anything contained in any records, accounts, estimates or returns;

“inland waters”, has the same meaning as in the Water Resources Act 1991;

[“lateral drain” means—

(a) that part of a drain which runs from the curtilage of a building (or buildings or yards within the same curtilage) to the sewer with which the drain communicates or is to communicate; or

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(b) (if different and the context so requires) the part of a drain identified in a declaration of vesting made under section 102 above or in an agreement made under section 104 above;]

["licensed water supplier" shall be construed in accordance with section 17B(9) above;]

["limited company" means a company (as defined in section 1(1) of the Companies Act 2006) that—

(a) is registered in England and Wales or Scotland, and

(b) is limited by shares;]

"local authority" means the council of a district or of a London borough or the Common Council of the City of London [but, in relation to Wales, means the council of a county or county borough];

"local statutory provision" means—

(a) a provision of a local Act (including an Act confirming a provisional order);

(b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;

(c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or

(d) a provision of any other instrument which is in the nature of a local enactment;

"meter" means any apparatus for measuring or showing the volume of water supplied to, or of effluent discharged from, any premises;

"micro-organism" includes any microscopic biological entity which is capable of replication;

"modifications" includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

. . .

. . .

["the NRBW" means the Natural Resources Body for Wales;]

"navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

["new towns residuary body" means—

(a) in relation to a new town in England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) or (b) of the Housing and Regeneration Act 2008 [or the Greater London Authority so far as exercising its new towns and urban development functions] (and references to the "English new towns residuary body" are to be read accordingly); and

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(b) in relation to a new town in Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) or (ii) of the New Towns Act 1981 (and references to the "Welsh new towns residuary body" are to be read accordingly);]

"notice" means notice in writing;

[. . .]

"owner", in relation to any premises, means the person who—

(a) is for the time being receiving the rack-rent of the premises, whether on his own account or as agent or trustee for another person; or

(b) would receive the rack-rent if the premises were let at a rack-rent,

and cognate expressions shall be construed accordingly;

"prescribed" means prescribed by regulations made by the Secretary of State;

"protected land", in relation to a company holding an appointment under Chapter I of Part II of this Act, means any land which, or any interest or right in or over which—

(a) was transferred to that company in accordance with a scheme under Schedule 2 to the Water Act 1989 or, where that company is a statutory water company, was held by that company at any time during the financial year ending with 31st March 1990;

(b) is or has at any time on or after 1st September 1989 been held by that company for purposes connected with the carrying out of its functions as a water undertaker or sewerage undertaker (including any functions which for the purposes for which [section 217] above has effect are taken to be such functions by virtue of subsection (6) or (7) of that section); or

(c) has been transferred to that company in accordance with a scheme under Schedule 2 to this Act from another company in relation to which that land was protected land when the other company held an appointment under that Chapter;

"public authority" means any Minister of the Crown or government department, [the Environment Agency], [the NRBW,] any local authority or county council or any person certified by the Secretary of State to be a public authority for the purposes of this Act;

"public sewer" means [(subject to section 106(1A) above)] a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Schedule 2 to the Water Act 1989 or Schedule 2 to this Act or under section 179 above or otherwise, and "private sewer" shall be construed accordingly;

"railway undertakers" means the British Railways Board, [Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999) of Transport for London,] or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on any railway;

"records" includes computer records and any other records kept otherwise than in a document;

["regional committee" means a regional committee of the Council established under section 27A above;]

"the relevant sewerage provisions" means the following provisions of this Act, that is to say—

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(a) Chapters II and III of Part IV (except sections 98 to 101 and 110 and so much of Chapter III of that Part as provides for regulations under section 138 or has effect by virtue of any such regulations);

(b) sections 160, 171, 172(4), 178, 184, 189, 196 and 204 and paragraph 4 of Schedule 12; and

(c) the other provisions of this Act so far as they have effect for the purposes of any provision falling within paragraph (a) or (b) of this definition;

"relevant undertaker" means a water undertaker or sewerage undertaker;

"resource main" means (subject to subsection (2) below) any pipe, not being a trunk main, which is or is to be used for the purpose of—

(a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or

(b) giving or taking a supply of water in bulk;

"service pipe" means (subject to subsection (2) below [and to section 51E(3) above]) so much of a pipe which is, or is to be, connected with a water main for supplying water from that main to any premises as—

(a) is or is to be subject to water pressure from that main; or

(b) would be so subject but for the closing of some valve,

and includes part of any service pipe;

"services" includes facilities;

"sewer" includes (without prejudice to subsection (2) below) all sewers and drains (not being drains within the meaning given by this subsection) which are used for the drainage of buildings and yards appurtenant to buildings;

"sewerage services" includes

the disposal of sewage and any other services which are required to be provided by a sewerage undertaker for the purpose of carrying out its functions;

"special administration order" has the meaning given by section 23 above;

"statutory water company" means any company which was a statutory water company for the purposes of the Water Act 1973 immediately before 1st September 1989;

"stopcock" includes any box or pit in which a stopcock is enclosed and the cover to any such box or pit;

"street" has, subject to subsection (5) below, the same meaning as in Part III of the New Roads and Street Works 1991;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978;

"substance" includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

"supply of water in bulk" means a supply of water for distribution by a water undertaker taking the supply;

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"surface water" includes water from roofs;

"trunk main" means a water main which is or is to be used by a water undertaker for the purpose of—

(a) conveying water from a source of supply to a filter or reservoir or from one filter or reservoir to another filter or reservoir; or

(b) conveying water in bulk, whether in the course of taking a supply of water in bulk or otherwise, between different places outside the area of the undertaker, from such a place to any part of that area or from one part of that area to another part of that area;

"underground strata" means strata subjacent to the surface of any land;

"vessel" includes a hovercraft within the meaning of the Hovercraft Act 1968;

"water main" means (subject to subsection (2) below) any pipe, not being a pipe for the time being vested in a person other than the undertaker, which is used or to be used by a water undertaker [or licensed water supplier] for the purpose of making a general supply of water available to customers or potential customers of the undertaker [or supplier], as distinct from for the purpose of providing a supply to particular customers;

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except mains and other pipes which belong to [the Environment Agency][, the NRBW] or a water undertaker or are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises.

(2) In this Act—

(a) references to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and

(b) references to any sewage disposal works shall include references to the machinery and equipment of those works and any necessary pumping stations and outfall pipes;

and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.

(3) Nothing in Part III or IV of this Act by virtue of which a relevant undertaker owes a duty to any particular person to lay any water main, resource main or service pipe or any sewer, [lateral drain,] disposal main or discharge pipe shall be construed—

(a) as conferring any power in addition to the powers conferred apart from those Parts; or

(b) as requiring the undertaker to carry out any works which it has no power to carry out.

(4) References in this Act to the fixing of charges in relation to any premises by reference to volume are references to the fixing of those charges by reference to the volume of water supplied to those premises, to the volume of effluent discharged from those premises, to both of those factors or to one or both of those factors taken together with other factors.

[(4A) In this Act, unless otherwise stated, references to the supply system of a water undertaker are to the water mains and other pipes which it is the undertaker's duty to develop and maintain by virtue of section 37 above.]

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(5) Until the coming into force of Part III of the New Roads and Street Works Act 1991, the definition of "street" in subsection (1) above shall have effect as if the reference to that Part were a reference to the Public Utilities Street Works Act 1950; but nothing in this section shall be taken—

(a) to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this section); or

(b) in the period before the coming into force of that Part, to prevent references in this Act to a street, where the street is a highway which passes over a bridge or through a tunnel, from including that bridge or tunnel.

(6) For the purposes of any provision of this Act by or under which power is or may be conferred on any person to recover the expenses incurred by that person in doing anything, those expenses shall be assumed to include such sum as may be reasonable in respect of establishment charges or overheads.

(7) References in this Act to the later or latest of two or more different times or days are, in a case where those times or days coincide, references to the time at which or, as the case may be, the day on which they coincide.

(8) Where by virtue of any provision of this Act any function of a Minister of the Crown is exercisable concurrently by different Ministers, that function shall also be exercisable jointly by any two or more of those Ministers.

(9) Sub-paragraph (1) of paragraph 1 of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991 has effect (by virtue of sub-paragraph (2)(b) of that paragraph) so that references in this Act to things done under or for the purposes of provisions of this Act or the Water Resources Act 1991 include references to things done, or treated as done, under or for the purposes of the corresponding provisions of the law in force before the commencement of this Act.

[(10) If the Assembly designates a person as Chief Inspector of Drinking Water for Wales under section 86(1B) above, references in this Act to the Chief Inspector of Drinking Water, as respects anything to be done in relation to him, shall be taken as references to the person designated as the Chief Inspector of Drinking Water by the Secretary of State and also the person designated by the Assembly as the Chief Inspector of Drinking Water for Wales.]

[(11) Subsection (10) does not apply to references to the Chief Inspector of Drinking Water in sections 8, 17AA, 51CA, 51CB, 66DB, 66P and 86ZA.]

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, s 343(1), the Public Health Act 1961, s 67(3), the Water Act 1989, ss 43(8), 78(4), 160(3), 166(9), 167(7), 189(1), Sch 8, para 2(12), Sch 10, para 6(1), Sch 19, paras 3(6), 8(8), and the New Roads and Street Works Act 1991, Sch 8, para 122(1), (3), and gives effect to Law Commission Recommendations Nos 15, 17–19, Cmnd 1483; sub-s (2) derived from the Public Health Act 1936, s 90(4), and the Water Act 1989, s 189(4); sub-s (3) derived from the Water Act 1989, Sch 19, paras 1, 11; sub-s (4) derived from the Water Act 1989, ss 43(8), 77(5), Sch 10, para 6(2); sub-s (5) derived from the Water Act 1989, s 189(1), (5); sub-s (6) derived from the Water Act 1989, s 189(7), and gives effect to Law Commission Recommendation No 20, Cmnd 1483; sub-ss (7)–(9) derived from the Water Act 1989, s 189(8)–(10).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Amendment

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Sub-s (1): in definition “accessories” words “electronic communications apparatus” in square brackets substituted by the Communications Act 2003, s 406(1), Sch 17, para 110.

Date in force (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by the Communications Act 2003, s 408(6)): 25 July 2003–29 December 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and the Communications Act 2003, ss 406(6), 408, Sch 18, para 2.

Date in force (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Sub-s (1): definition “the Assembly” inserted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (7)(a).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2.

Sub-s (1): definition “the Authority” inserted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (7)(a).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): definition “the CMA” inserted by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 53, 68(a).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1): definition “the Council” inserted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (7)(b).

Date in force: 1 August 2005: see SI 2005/968, art 3(d); for transitional provisions see art 4(1), Sch 2, para 3 thereto.

Sub-s (1): in definition “customer or potential customer” in para (a) words “(other than a licensed water supplier)” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 50(1), (2)(a).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): definition “the Director” (omitted) repealed by the Water Act 2003, s 101, Sch 7, Pt 2, para 27(1), (7)(c), Sch 9, Pt 3.

Date in force: 1 April 2006: see SI 2005/2714, art 4(f), (g)(i); for savings see art 5(1), Schedule, para 8 thereto.

Sub-s (1): in definition “harbour authority” words from “Chapter II” to “Shipping Act 1995” in square brackets substituted by the Merchant Shipping Act 1995, s 314(2), Sch 13, para 89(b).

Sub-s (1): definition “lateral drain” inserted by the Water Act 2003, s 97(1), (9)(a).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): definition “licensed water supplier” inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 50(1), (2)(c).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): definition “limited company” substituted by SI 2009/1941, art 2(1), Sch 1, para 126(1), (3).

Date in force: 1 October 2009: see SI 2009/1941, art 1(2).

Sub-s (1): in definition “local authority” words from “but in relation to” to “county borough” in square brackets inserted by the Local Government (Wales) Act 1994, s 22(5), Sch 11, para 2(2).

Sub-s (1): definition “the Monopolies Commission” omitted repealed by SI 1999/506, art 30(c).

Date in force: 1 April 1999: see SI 1999/506, art 1.

Sub-s (1): definition “the NRA” omitted repealed by the Environment Act 1995, s 120, Sch 22, para 125, Sch 24.

Sub-s (1): definition “the NRBW” inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 259(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): definition “new towns residuary body” inserted by the Housing and Regeneration Act

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2008, s 56, Sch 8, paras 55, 59.

Date in force: 1 December 2008: see SI 2008/3068, arts 1(2), 2(1)(w), (3); for transitional provisions and savings see arts 6–13 thereof.

Sub-s (1): in definition "new towns residuary body" in para (a) words from "or the Greater" to "urban development functions" in square brackets inserted by the Localism Act 2011, s 195(1), Sch 19, para 29.

Date in force: 1 April 2012: see SI 2012/628, art 6(g), (i).

Sub-s (1): definition "the OFT" (omitted) inserted by the Enterprise Act 2002, s 278(1), Sch 25, para 25(1), (11).

Date in force: 1 April 2003: see SI 2003/766, art 2, Schedule; for transitional and transitory provisions see the Enterprise Act 2002, s 276, Sch 24, paras 2–6.

Sub-s (1): definition "the OFT" (omitted) repealed by the Enterprise and Regulatory Reform Act 2013, s 26(4), Sch 6, Pt 1, paras 52, 68(b).

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(a), (d); for transitional provisions and savings see art 2(2), Schedule.

Sub-s (1): in definition "protected land" in para (b) words "section 217" in square brackets substituted by the Water Act 2014, s 56, Sch 7, paras 2, 120(1), (2)(b).

Date in force: 1 January 2015: see SI 2014/3320, art 2(2)(d), (e)(i), (iii), (iv).

Sub-s (1): in definition "public authority" words "the Environment Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 125.

Sub-s (1): in definition "public authority" words "the NRBW," in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 259(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (1): in definition "public sewer" words "(subject to section 106(1A) above)" in square brackets inserted by the Water Act 2003, s 99(1), (6).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): in definition "railway undertakers" words from "Transport for London or" to "of Transport for London," in square brackets substituted by SI 2003/1615, art 2, Sch 1, Pt 1, para 15.

Date in force: 15 July 2003: see SI 2003/1615, art 1(1).

Sub-s (1): definition "regional committee" inserted by the Water Act 2003, s 101(1), Sch 7, Pt 2, para 27(1), (7)(d).

Date in force: 1 October 2005: see SI 2005/2714, art 2(l)(v)(aa), (cc).

Sub-s (1): in definition "service pipe" words "and to section 51E(3) above" in square brackets inserted by the Water Act 2003, s 92(6).

Date in force: 28 May 2004: see SI 2004/641, art 4(a); for transitional provisions and effect see SI 2004/641, art 6, Sch 3, para 7 and the Water Act 2003, s 92(7).

Sub-s (1): in definition "water main" words "or licensed water supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 50(1), (2)(b)(i).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): in definition "water main" words "or supplier" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 50(1), (2)(b)(ii).

Date in force: 1 April 2004: see SI 2004/641, art 3(y), Sch 2; for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (1): in definition "watercourse" words "the Environment Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 125.

Sub-s (1): in definition "watercourse" words "or NRBW" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 259(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (3): words "lateral drain," in square brackets inserted by the Water Act 2003, s 97(1), (9)(b).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

Sub-s (4A): inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 50(1), (3).

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Date in force (for certain purposes): 1 October 2004: see SI 2004/2528, art 2(t)(v); for transitional provisions see art 4(1), Schedule, para 8 thereto.
Date in force (for remaining purposes): 1 December 2005: see SI 2005/2714, art 3(c).

Sub-s (10): inserted by the Water Act 2003, s 57(9).
Date in force: 1 April 2004: see SI 2004/641, art 3(m); for transitional provisions see art 6, Sch 3, paras 5, 7 thereto.

Sub-s (11): inserted by the Water Act 2014, s 56, Sch 7, paras 2, 120(1), (3).
Date in force (for certain purposes): 1 January 2015: see SI 2014/3320, art 2(2)(d), (e)(i), (iii), (v).
Date in force (for remaining purposes): to be appointed: see the Water Act 2014, s 94(3).

See Further

See further, in relation to the application of this section, with modifications, in respect of the general duty on the Secretary of State and the Water Services Regulation Authority for the purposes of their functions exercised under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 or under this Act: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(2), (4), (5), Sch 1, paras 1, 16(2).

Transfer of Functions

Functions of the Secretary of State and the Minister of the Crown, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

220 Effect of local Acts

Subject to any provision to the contrary which is contained in Schedule 26 to the Water Act 1989 or in the Water Consolidation (Consequential Provisions) Act 1991, nothing in any local statutory provision passed or made before 1st September 1989 shall be construed as relieving any relevant undertaker from any liability arising by virtue of this Act in respect of any act or omission occurring on or after that date.

NOTES

Derivation

This section derived from the Water Act 1989, s 191(6).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Other supplemental provisions

[221 Crown Application]

[(1) Subject to the provisions of this section, this Act shall bind the Crown.

(2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may, on the application of the [appropriate agency], a water undertaker or a sewerage undertaker, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in subsection (2) above, any provision made by or under this Act shall apply to persons in the public service of the Crown as it applies to other persons.

(4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient

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that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.

(5) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.

(6) Subject to subsections (4) and (5) above, the powers conferred by sections 155, 159, 161(2) and 167 above shall be exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.

(7) In this section—

["the appropriate agency" means—

(a) in relation to any act or omission of the Crown in England, the Agency;

(b) in relation to any act or omission of the Crown in Wales, the NRBW;]

"the appropriate authority" has the same meaning as it has in Part XIII of the Town and Country Planning Act 1990 by virtue of section 293(2) of that Act;

"Crown or Duchy interest" means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

"Crown premises" means premises held by or on behalf of the Crown.

(8) The provisions of subsection (3) of section 293 of the Town and Country Planning Act 1990 (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.]

NOTES

Derivation

Sub-s (1) derived from the Public Health Act 1936, s 341(1), the Water Act 1989, s 192(1); sub-ss (2)–(4) derived from the Water Act 1989, s 192(2)–(4); sub-s (5) derived from the Public Health Act 1936, s 341(1), (3), the Water Act 1989, s 192(5), the Planning (Consequential Provisions) Act 1990, Sch 2, para 81(3).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted by the Environment Act 1995, s 116, Sch 21, Pt I, para 1(1).

Date in force: 1 December 2000: see SI 2000/3033, art 2.

Sub-s (2): words "appropriate agency" in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 260(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Sub-s (7): definition "the appropriate agency" inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 260(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), the functions under sub-s (4) above shall be exercisable by the National Assembly for Wales

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concurrently with the Minister of the Crown by whom they are exercisable.

222 Application to Isles of Scilly **[222 Application to the Isles of Scilly]**

(1) Subject to the provisions of any order under this section, nothing in this Act shall require or authorise any function, duty or power to be carried out, performed or exercised in relation to the Isles of Scilly by the NRA or any relevant undertaker; and references in the preceding provisions of this Act to England and Wales shall not include references to those Isles.

(2) The Secretary of State may, on the application of the Council of the Isles of Scilly, by order make provision with respect to the carrying out in those Isles of functions falling under this Act to be carried out in relation to other parts of England and Wales by the NRA or by a relevant undertaker.

(3) Without prejudice to the generality of the power conferred by subsection (2) above, an order under this section may apply any provision of this Act, of the Water Consolidation (Consequential Provisions) Act 1991 or of the Water Act 1989 in relation to the Isles of Scilly with or without modifications.

(4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) An order under this section may—

(a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.

(6) Chapter IV of Part III of this Act, except section 90, shall apply to the Isles of Scilly as if the Council of the Isles of Scilly were a water undertaker and the Isles were the area of the undertaker.

(7) The exception of section 90 above from the provisions of subsection (6) above shall be without prejudice to the power to make provision by an order under this section in relation to that section.

[(1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.

(2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.

(3) An order under this section may—

(a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.

(4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

NOTES

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Derivation

Sub-s (1) derived from the Water Act 1989, s 193(1); sub-ss (2), (3) derived from the Water Act 1989, s 193(2); sub-ss (4), (5) derived from the Water Act 1989, s 193(3); sub-s (6) derived from the Water (Fluoridation) Act 1985, s 5(2), the Water Act 1989, Sch 25, para 73.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This section does not extend to Scotland: see s 223(3).

Amendment

Substituted for certain purposes as from 1 February 1996, and prospectively substituted for remaining purposes as from a day to be appointed, by the Environment Act 1995, s 118(4).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

223 Short title, commencement and extent

(1) This Act may be cited as the Water Industry Act 1991.

(2) This Act shall come into force on 1st December 1991.

(3) Except for the purpose of giving effect to any scheme under Schedule 2 to this Act, this Act extends to England and Wales only.

NOTES

Initial Commencement

Specified date

Specified date: 1 December 1991: see sub-s (2) above.

SCHEDULE 1

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 34(4), 101(2), Sch 9, Pt 2.

Date in force: 1 April 2006: see SI 2005/2714, art 4(a), (g)(i); for savings see art 5(1), Schedule, para 8 thereto.

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 34(4), 101(2), Sch 9, Pt 2.

Date in force: 1 April 2006: see SI 2005/2714, art 4(a), (g)(i); for savings see art 5(1), Schedule, para 8 thereto.

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 34(4), 101(2), Sch 9, Pt 2.

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Date in force: 1 April 2006: see SI 2005/2714, art 4(a), (g)(i); for savings see art 5(1), Schedule, para 8 thereto.

[SCHEDULE 1A
THE WATER SERVICES REGULATION AUTHORITY]

NOTES

Amendment

Inserted by the Water Act 2003, s 34(2), Sch 1.

Date in force (for certain purposes): 1 April 2006: see SI 2005/2714, art 4(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Date in force (for remaining purposes): to be appointed: see the Water Act 2003, s 105(3), (5).

[Section 1A(3)]

NOTES

Amendment

Inserted by the Water Act 2003, s 34(2), Sch 1.

Date in force (for certain purposes): 1 April 2006: see SI 2005/2714, art 4(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Date in force (for remaining purposes): to be appointed: see the Water Act 2003, s 105(3), (5).

[Membership

1

(1) The Authority shall consist of a chairman, and at least two other members, appointed by the Secretary of State.

(2) The Secretary of State shall consult—

(a) the Assembly, before appointing any member; and

(b) the chairman, before appointing any other member.

Terms of appointment, remuneration, pensions etc

2

(1) Subject to this Schedule, the chairman and other members of the Authority shall hold and vacate office as such in accordance with the terms of their respective appointments.

(2) Their terms of appointment shall be determined by the Secretary of State.

3

(1) An appointment of a person to hold office as chairman or as one of the other members of the Authority shall be for a term not exceeding five years.

(2) A person holding office as chairman or other member—

(a) may resign that office by giving notice in writing to the Secretary of State; and

(b) may be removed from office by the Secretary of State on the ground of incapacity or

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misbehaviour.

(3) The Secretary of State shall consult the Assembly before removing from office a person holding office as chairman or other member.

(4) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.

4

(1) The Authority shall pay to its chairman and its other members such remuneration, and such travelling and other allowances, as may be determined by the Secretary of State.

(2) The Authority shall, if required to do so by the Secretary of State—

(a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been the chairman or a member of the Authority; or

(b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.

(3) If the Secretary of State determines that there are special circumstances which make it right for a person ceasing to hold office as chairman or other member of the Authority to receive compensation, the Authority shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.

Staff

5

The Authority may, with the approval of the Minister for the Civil Service as to numbers and terms and conditions of service, appoint such staff as it may determine.

Committees

6

(1) The Authority may establish committees and any committee of the Authority may establish sub-committees.

(2) The members of a committee of the Authority may include persons who are not members of the Authority (and the members of a sub-committee may include persons who are not members of the committee or the Authority).

Proceedings etc

7

(1) The Authority may regulate its own procedure.

(2) The validity of anything done by the Authority is not affected by a vacancy among its members or by a defect in the appointment of a member.

8

A document purporting to be duly executed under the seal of the Authority, or signed on its behalf, shall

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be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.

Code of Practice

9

(1) The Authority shall prepare, and may revise, a code of practice governing the discharge by it of its functions.

(2) The Authority shall, in exercising its functions, have regard to the provisions of the code.

(3) In preparing or revising the code, the Authority shall consult—

(a) the Secretary of State;

(b) the Assembly;

(c) the Environment Agency;

[(ca) the NRBW;]

(d) the Council;

(e) relevant undertakers;

(f) licensed water suppliers; and

(g) such other persons as the Authority considers appropriate.

(4) The Authority shall publish in such manner as it considers appropriate the code as for the time being in force.

Performance of functions

10

(1) Anything authorised or required to be done by the Authority may be done by—

(a) any member or employee of the Authority who is authorised for that purpose by the Authority, whether generally or specially;

(b) any committee of the Authority which has been so authorised.

(2) The Authority may not so authorise a committee whose members include any person who is not a member or employee of the Authority.

[(3) Sub-paragraph (1) is subject to provision in rules made under section 51 of the Competition Act 1998 by virtue of paragraph 1A of Schedule 9 to that Act in respect of the exercise of a function under Part 1 of that Act.]

11

Supplementary powers

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12

(1) The Authority has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

(2) That power includes the formation of advisory bodies.]

NOTES

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 34(2), Sch 1.

Date in force (for the purposes of paras 1–10, 12): 1 April 2006: see SI 2005/2714, art 4(a); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Date in force (for the purposes of para 11): to be appointed: see the Water Act 2003, s 105(3), (5).

Para 9: sub-para (3)(ca) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 261.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Para 10: sub-para (3) inserted by the Enterprise and Regulatory Reform Act 2013, s 57, Sch 15, paras 4, 6.

Date in force: 1 April 2014: see SI 2014/416, art 2(1)(b), (f); for transitional provisions and savings see art 2(2), Schedule.

Para 11: repealed by the Natural Environment and Rural Communities Act 2006, s 105, Sch 11, Pt 1, para 132, Sch 12.

Date in force: 1 October 2006: see SI 2006/2541, art 2.

SCHEDULE 2
TRANSITIONAL PROVISION ON TERMINATION OF APPOINTMENTS

Sections 10, 23

Cases where Schedule applies

1

(1) This Schedule shall apply in each of the cases specified in sub-paragraphs (2) [to (3A)] below.

(2) The first case in which this Schedule applies is where—

(a) the Secretary of State or [the Authority] is proposing to make an appointment or variation replacing a company as a relevant undertaker; and

(b) by virtue of that appointment a company ("the new appointee") will hold an appointment as the water undertaker or sewerage undertaker for an area which is or includes the whole or any part of the area for which, until the relevant date, another company ("the existing appointee") holds an appointment as the water undertaker or, as the case may be, sewerage undertaker.

(3) The second case in which this Schedule applies is where—

(a) the High Court has made a special administration order in relation to any company [holding an appointment under Chapter 1 of this Part] ("the existing appointee"); and

(b) it is proposed that on and after the relevant date another company ("the new appointee")

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should, without any such appointment or variation as is mentioned in sub-paragraph (2) above having been made, hold an appointment as water undertaker or sewerage undertaker for an area which is or includes the whole or any part of the area for which until that date the existing appointee holds an appointment as water undertaker or, as the case may be, sewerage undertaker.

[(3A) The third case in which this Schedule applies is where—

(a) the High Court has made a special administration order in relation to any company which is a qualifying licensed water supplier ("the transferor"); and

(b) it is proposed that on and after the relevant date another company ("the transferee") should carry on activities

relating to the introduction or introductions of water mentioned in section 23(6)(b) of this Act which were carried on by the transferor until that date

.]

(4) In this Schedule—

"existing appointee" and "new appointee" shall be construed in accordance with sub-paragraph (2) or (3) above according to whether this Schedule is applying in the case mentioned in the first or second of those sub-paragraphs;

"other appointees" means any companies, other than the existing appointee and the new appointee, which are likely on or at a time after the relevant date to be holding appointments as water undertakers or sewerage undertakers for any area which is or includes any part of the area for which the existing appointee has at any time held an appointment as water undertaker or sewerage undertaker;

["other relevant companies" means any companies, other than the transferor and the transferee, which are likely on or at a time after the relevant date to be holding

appointments as water undertakers for any area in which, or in part of which, the activities relating to the introduction or introductions of water mentioned in section 23(6)(b) of this Act will be carried on by the transferee;]

"the relevant date" means—

(a) where this Schedule applies by virtue of sub-paragraph (2) above, the coming into force of the appointment or variation mentioned in paragraph (a) of that sub-paragraph; and

(b) where this Schedule applies by virtue of sub-paragraph (3) [or (3A)] above, such day, being a day before the discharge of the special administration order takes effect, as the High Court may appoint for the purposes of this Schedule; and

"special administrator", in relation to a company in relation to which a special administration order has been made, means the person for the time being holding office for the purposes of section 23(1) of this Act;

["transferor" and "transferee" shall be construed in accordance with sub-paragraph (3A) above].

Making and modification of transfer schemes

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(1) The existing appointee, acting with the consent of the new appointee *and, in relation to the matters affecting them, of any other appointees*, may make a scheme under this Schedule for the transfer of property, rights and liabilities from the existing appointee to the new appointee.

(2) A scheme under this Schedule shall not take effect unless it is approved by the Secretary of State or [the Authority].

(3) Where a scheme under this Schedule is submitted to the Secretary of State or [the Authority] for [his or its] approval, [he or it] may, with the consent of the new appointee*, of the existing appointee and, in relation to the matters affecting them, of any other appointees,* [and the existing appointee] modify the scheme before approving it.

(4) If at any time after a scheme under this Schedule has come into force in relation to the property, rights and liabilities of any company the Secretary of State considers it appropriate to do so and the existing appointee*, the new appointee and, in relation to the provisions of the order which affect them, any other appointees* [and the new appointee] consent to the making of the order, the Secretary of State may by order provide that that scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.

(5) An order under sub-paragraph (4) above may make, with effect from the coming into force of the scheme to which it relates, any such provision as could have been made by the scheme and, in connection with giving effect to that provision from that time, may contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

(6) In determining, in accordance with his duties under Part I of this Act, whether and in what manner to exercise any power conferred on him by this paragraph the Secretary of State or [the Authority] shall have regard to the need to ensure that any provision for the transfer of property, rights and liabilities in accordance with a scheme under this Schedule allocates property, rights and liabilities to the different companies affected by the scheme in such proportions as appear to [him or it] to be appropriate in the context of the different functions which will, by virtue of this Act, be carried out at different times on and after the relevant date by the new appointee, by the existing appointee and by any other appointees.

(7) It shall be the duty of the new appointee, of the existing appointee and of any other appointees to provide the Secretary of State or [the Authority] with all such information and other assistance as [he or it] may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on [him or it] by this paragraph.

[(7A) In a case specified in paragraph 1(3A) above—

(a) the preceding provisions of this paragraph shall have effect as if—

(i) any reference to the existing appointee were a reference to the transferor;

(ii) any reference to the new appointee were a reference to the transferee; and

(iii) any reference to other appointees were a reference to other relevant companies; and

(b) sub-paragraph (6) above shall have effect as if the reference to functions were, in relation to a company which is a licensed water supplier, a reference to activities authorised by its licence and any statutory functions imposed on it in consequence of its licence.]

(8) A company which without reasonable excuse fails to do anything required of it by virtue of sub-paragraph (7) above shall be guilty of an offence and liable, on summary conviction, to a fine not

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exceeding level 5 on the standard scale.

(9) Without prejudice to the other provisions of this Act relating to the special administrator of a company, anything which is required by this paragraph to be done by a company shall, where that company is a company in relation to which a special administration order is in force, be effective only if it is done on the company's behalf by its special administrator.

Transfers by scheme

3

(1) A scheme under this Schedule for the transfer of the existing appointee's property, rights and liabilities shall come into force on the relevant date and, on coming into force, shall have effect, in accordance with its provisions and without further assurance, so as to transfer the property, rights and liabilities to which the scheme relates to the new appointee.

(2) For the purpose of making any division of property, rights or liabilities which it is considered appropriate to make in connection with the transfer of property, rights and liabilities in accordance with a scheme under this Schedule, the provisions of that scheme may—

(a) create for the existing appointee, the new appointee or any other appointees an interest in or right over any property to which the scheme relates;

(b) create new rights and liabilities as between any two or more of those companies [(but may not impose new liabilities on any other appointee)]; and

(c) in connection with any provision made by virtue of paragraph (a) or (b) above, make incidental provision as to the interests, rights and liabilities of other persons with respect to the subject-matter of the scheme.

(3) A scheme under this Schedule may contain provision for the consideration to be provided by the new appointee and by any other appointees in respect of the transfer or creation of property, rights and liabilities by means of the scheme; and any such provision shall be enforceable in the same way as if the property, rights and liabilities had been created or transferred, and (if the case so requires) had been capable of being created or transferred, by agreement between the parties.

(4) The property, rights and liabilities of the existing appointee that shall be capable of being transferred in accordance with a scheme under this Schedule shall include—

(a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the existing appointee;

(b) such property, rights and liabilities to which the existing appointee may become entitled or subject after the making of the scheme and before the relevant date as may be described in the scheme;

(c) property situated anywhere in the United Kingdom or elsewhere;

(d) rights and liabilities under enactments;

(e) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.

(5) The provision that may be made by virtue of sub-paragraph (2)(b) above includes—

(a) provision for treating any person who is entitled by virtue of a scheme under this Schedule to possession of a document as having given another person an acknowledgement in writing of

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the right of that other person to the production of the document and to delivery of copies thereof, and

(b) provision applying section 64 of the Law of Property Act 1925 (production and safe custody of documents) in relation to any case in relation to which provision falling within paragraph (a) above has effect.

(6) For the avoidance of doubt, it is hereby declared that the transfers authorised by paragraph (a) of sub-paragraph (4) above include transfers which, by virtue of that paragraph, are to take effect as if there were no such contravention, liability or interference with any interest or right as there would be, in the case of a transfer or assignment otherwise than in accordance with a scheme under this Schedule, by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the existing appointee is entitled or subject to the property, right or liability in question.

[(7) In a case specified in paragraph 1(3A) above the preceding provisions of this paragraph shall have effect as if—

(a) any reference to the existing appointee were a reference to the transferor;

(b) any reference to the new appointee were a reference to the transferee; and

(c) any reference to other appointees were a reference to other relevant companies.]

Transfer of appointment

4

(1) Where a scheme under this Schedule is made in the case specified in paragraph 1(3) above, the scheme may provide for the transfer to the new appointee, with such modifications as may be specified in the scheme, of the appointment under Chapter I of Part II of this Act which is held by the existing appointee.

(2) In such a case different schemes under this Schedule may provide for the transfer of such an appointment to different companies as respects different parts of the area to which the appointment relates.

[Exclusion of transfer of licence

4A

Where a scheme under this Schedule is made in the case specified in paragraph 1(3A) above, the scheme may not provide for the transfer to the transferee of the licence under Chapter 1A of Part 2 of this Act which is held by the transferor.]

Supplemental provisions of schemes

5

(1) A scheme under this Schedule may contain supplemental, consequential and transitional provision for the purposes of, or in connection with, the provision for the transfers or any other provision made by the scheme.

(2) Without prejudice to the generality of sub-paragraph (1) above, a scheme under this Schedule may provide—

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(a) that for purposes connected with any transfers made in accordance with the scheme (including the transfer of rights and liabilities under an enactment) the new appointee is to be treated as the same person in law as the existing appointee;

(b) that, so far as may be necessary for the purposes of or in connection with any such transfers, agreements made, transactions effected and other things done by or in relation to the existing appointee are to be treated as made, effected or done by or in relation to the new appointee;

(c) that, so far as may be necessary for the purposes of or in connection with any such transfers, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any officer of, the existing appointee are to have effect with such modifications as are specified in the scheme;

(d) that proceedings commenced by or against the existing appointee are to be continued by or against the new appointee;

(e) that the effect of any transfer under the scheme in relation to contracts of employment with the existing appointee is not to be to terminate any of those contracts but is to be that periods of employment with the existing appointee are to count for all purposes as periods of employment with the new appointee;

(f) that disputes as to the effect of the scheme between the existing appointee and the new appointee, between either of them and any other appointee or between different companies which are other appointees are to be referred to such arbitration as may be specified in or determined under the scheme;

(g) that determinations on such arbitrations and certificates given jointly by two or more such appointees as are mentioned in paragraph (f) above as to the effect of the scheme as between the companies giving the certificates are to be conclusive for all purposes.

[(3) In a case specified in paragraph 1(3A) above—

(a) sub-paragraph (2) above shall have effect as if—

(i) any reference to the existing appointee were a reference to the transferor;

(ii) any reference to the new appointee were a reference to the transferee; and

(iii) any reference to any other appointee or appointees were a reference to any other relevant company or companies; and

(b) paragraph (g) of that sub-paragraph shall have effect as if the reference to two or more such appointees as are mentioned in paragraph (f) of that sub-paragraph were a reference to two or more such persons as are mentioned in that paragraph (as it has effect by virtue of paragraph (a) above).]

Duties of existing appointee after the scheme comes into force

6

(1) A scheme under this Schedule may provide for the imposition of duties on the existing appointee and on the new appointee to take all such steps as may be requisite to secure that the vesting in the new appointee, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.

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(2) The provisions of a scheme under this Schedule may require the existing appointee to comply with any directions of the new appointee in performing any duty imposed on the existing appointee by virtue of a provision included in the scheme under sub-paragraph (1) above.

(3) A scheme under this Schedule may provide that, until the vesting of any foreign property, right or liability of the existing appointee in the new appointee is effective under the relevant foreign law, it shall be the duty of the existing appointee to hold that property or right for the benefit of, or to discharge that liability on behalf of, the new appointee.

(4) Nothing in any provision included by virtue of this paragraph in a scheme under this Schedule shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting by virtue of the scheme in the new appointee of any foreign property, right or liability.

(5) A scheme under this Schedule may provide that, in specified cases, foreign property, rights or liabilities that are acquired or incurred by an existing appointee after the scheme comes into force are immediately to become property, rights or liabilities of the new appointee; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the existing appointee when the scheme comes into force.

(6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(7) Any expenses incurred by an existing appointee in consequence of any provision included by virtue of this paragraph in a scheme under this Schedule shall be met by the new appointee.

(8) Duties imposed on a company by virtue of this paragraph shall be enforceable in the same way as if they were imposed by a contract between the existing appointee and the new appointee.

[(9) In a case specified in paragraph 1(3A) above, the preceding provisions of this paragraph shall have effect as if—

(a) any reference to the existing appointee were a reference to the transferor; and

(b) any reference to the new appointee were a reference to the transferee.]

Further transitional provision and local statutory provisions

7

(1) The Secretary of State may, if he thinks it appropriate to do so for the purposes of, or in connection with, any appointment or variation replacing a company as a relevant undertaker or any scheme under this Schedule, by order made by statutory instrument—

(a) make any provision which corresponds, in relation to any enactment referred to at the passing of the Water Act 1989 in Schedule 26 to that Act, to any provision originally made by that Schedule or makes similar provision in relation to any other enactment; or

(b) amend or repeal any local statutory provision.

(2) An order under this paragraph may—

(a) make provision applying generally in relation to local statutory provisions of a description specified in the order;

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(b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

(c) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

NOTES

Derivation

This Schedule derived from the Water Act 1989, Sch 5.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Amendment

Para 1: in sub-para (1) words "to (3A)" in square brackets substituted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (2).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Paras 1, 2: words "the Authority", "his or its", "he or it" and "him or it" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Para 1: in sub-para (3)(a) words "holding an appointment under Chapter 1 of this Part" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (3).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Para 1: sub-para (3A) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (4).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Para 1: in sub-para (4) definitions "other relevant companies" and ""transferor" and "transferee"" inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (5)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Para 1: in sub-para (4) in definition "the relevant date" in para (b) words "or (3A)" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (5)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Para 2: in sub-para (1) words "and, in relation to the matters affecting them, of any other appointees" in italics repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 34, Sch 5, para 1(1), (2).

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for transitional provisions see art 5(3) thereof.

Para 2: in sub-para (3) words from ", of the existing" to "any other appointees," in italics repealed and subsequent words in square brackets substituted, in relation to England and Wales, by the Flood and Water Management Act 2010, s 34, Sch 5, para 1(1), (3).

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for transitional provisions see art 5(3) thereof.

Para 2: in sub-para (4) words from ", the new appointee" to "any other appointees" in italics repealed and subsequent words in square brackets substituted, in relation to England and Wales, by the Flood and Water Management Act 2010, s 34, Sch 5, para 1(1), (4).

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for transitional provisions see art 5(3) thereof.

Para 2: sub-para (7A) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (6).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Para 3: in sub-para (2)(b) words "(but may not impose new liabilities on any other appointee)" in square brackets inserted, in relation to England and Wales, by the Flood and Water Management Act 2010, s 34, Sch 5, para 2.

Date in force: 1 April 2011: see SI 2011/694, art 3(f), (j); for transitional provisions see art 5(3) thereof.

Para 3: sub-para (7) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (7).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

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Para 4A: inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (8).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Para 5: sub-para (3) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (9).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).
Para 6: sub-para (9) inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 51(1), (10).
Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

See Further

See further, in relation to the application of this Schedule, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 3(3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 3
SPECIAL ADMINISTRATION ORDERS

Section 23

Part I
Modifications of the 1986 Act

General application of provisions of 1986 Act

1

Where a special administration order has been made, sections 11 to 15, 17 to 23 and 27 of the 1986 Act (which relate to administration orders under Part II of that Act) shall apply, with the modifications specified in the following provisions of this Part of this Schedule—

(a) as if references in those sections to an administration order were references to a special administration order and references to an administrator were references to a special administrator; and

(b) where the company in relation to which the order has been made is a statutory water company that is not a limited company, as if references to a company included references to such a company.

Effect of order

2

In section 11 of the 1986 Act (effect of order), as applied by this Part of this Schedule—

(a) the requirement in subsection (1)(a) that any petition for the winding up of the company shall be dismissed shall be without prejudice to the special administration order in a case where the order is made by virtue of section 25 of this Act;

(b) the references in subsections (1)(b), (3)(b) and (4) to an administrative receiver, in relation to a statutory water company that is not a limited company, shall include references to any receiver whose functions in relation to that company correspond to those of an administrative receiver in relation to a limited company; and

(c) the reference in subsection (3)(d) to proceedings shall include a reference to any

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proceedings under or for the purposes of section 18 of this Act.

Appointment of special administrator

3

In section 13 of the 1986 Act (appointment of administrator), as applied by this Part of this Schedule, for subsection (3) there shall be substituted the following subsection—

[ISOB

"(3) An application for an order under subsection (2) may be made—

(a) by the Secretary of State;

(b) with the consent of the Secretary of State, by [the Water Services Regulation Authority];

(c) by any continuing special administrator of the company or, where there is no such special administrator, by the company, the directors or any creditor or creditors of the company."

[ISOE

General powers of special administrator

4

In section 14 of the 1986 Act (general powers of administrator), as applied by this Part of this Schedule—

(a) in subsection (1)(b), the reference to the powers specified in Schedule 1 to that Act shall be deemed to include a reference to a power to act on behalf of the company for the purposes of this Act, any local statutory provision or the exercise or performance of any power or duty which is conferred or imposed on the company by virtue of its holding an appointment under Chapter I of Part II of this Act [or a licence under Chapter 1A of that Part]; and

(b) in subsection (4), the reference to a power conferred by the company's [articles of association] shall be deemed to include a reference to a power conferred by a local statutory provision or by virtue of the company's holding such an appointment [or licence].

Power to deal with charged property

5

(1) Section 15 of the 1986 Act (power to deal with charged property), as applied by this Part of this Schedule, shall have effect as follows.

(2) In subsection (5)(b) (amount to be paid to chargeholder not to be less than open market value), for the words "in the open market by a willing vendor" there shall be substituted the words "for the best price which is reasonably available on a sale which is consistent with the purposes of the special administration order".

(3) Subsections (7) and (8) (notice to registrar) shall not apply where the company in relation to which the special administration order is made is a statutory water company that is not a limited company.

Duties of special administrator

6

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(1) Section 17 of the 1986 Act (duties of administrator), as applied by this Part of this Schedule, shall have effect as follows.

(2) For subsection (2) there shall be substituted the following subsection—

[ISOB

"(2) Subject to any directions of the court, it shall be the duty of the special administrator to manage the affairs, business and property of the company in accordance with proposals, as for the time being revised under section 23, which have been prepared for the purposes of that section by him or any predecessor of his."

[ISOE

(3) In subsection (3), paragraph (a) (right of creditors to require the holding of a creditors' meeting) shall be omitted.

Discharge of order

7

(1) Section 18 of the 1986 Act (discharge and variation of administration order), as applied by this Part of this Schedule, shall have effect as follows.

(2) For subsections (1) and (2) there shall be substituted the following subsection—

[ISOB

"(1) An application for a special administration order to be discharged may be made—

(a) by the special administrator, on the ground that the purposes of the order have been achieved; or

(b) by the Secretary of State or, with the consent of the Secretary of State, [the Water Services Regulation Authority], on the ground that it is no longer necessary that those purposes are achieved."

[ISOE

(3) In subsection (3), the words "or vary" shall be omitted.

(4) In subsection (4), the words "or varied" and "or variation" shall be omitted and for the words "to the registrar of companies" there shall be substituted—

(a) where the company in relation to which the special administration order is made is a statutory water company that is not a limited company, the words "to [the Water Services Regulation Authority]"; and

(b) in any other case, the words "to the registrar of companies and to [the Water Services Regulation Authority]".

Notice of making of order

8

In section 21(2) of the 1986 Act (notice of order to be given by administrator), as applied by this Part of

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this Schedule, for the words “to the registrar of companies” there shall be substituted—

(a) where the company in relation to which the special administration order is made is a statutory water company that is not a limited company, the words “to [the Water Services Regulation Authority]”; and

(b) in any other case, the words “to the registrar of companies, to [the Water Services Regulation Authority]”.

Statement of proposals

9

In section 23 of the 1986 Act (statement of proposals), as applied by this Part of this Schedule, for subsections (1) and (2) there shall be substituted the following subsections—

[ISOB

“(1) Where a special administration order has been made, the special administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order, send a statement of his proposals for achieving the purposes of the order—

(a) to the Secretary of State and to [the Water Services Regulation Authority];

(b) so far as he is aware of their addresses, to all creditors of the company; and

(c) except where the company in relation to which the special administration order is made is a statutory water company that is not a limited company, to the registrar of companies;

and may from time to time revise those proposals.

(2) If at any time—

(a) the special administrator proposes to make revisions of the proposals for achieving the purposes of the special administration order; and

(b) those revisions appear to him to be substantial,

the special administrator shall, before making those revisions, send a statement of the proposed revisions to the Secretary of State, to [the Water Services Regulation Authority], (so far as he is aware of their addresses) to all creditors of the company and, except where the company in relation to which the special administration order is made is a statutory water company that is not a limited company, to the registrar of companies.

(2A) Where the special administrator is required by subsection (1) or (2) to send any person a statement before the end of any period or before making any revision of any proposals, he shall also, before the end of that period or, as the case may be, before making those revisions either—

(a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company; or

(b) publish in the prescribed manner a notice stating an address to which members should write for copies of the statement to be sent to them free of charge.”

[ISOE

Applications to court

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10

(1) Section 27 of the 1986 Act (protection of interests of creditors and members), as applied by this Part of this Schedule, shall have effect as follows.

(2) After subsection (1) there shall be inserted the following subsection—

[ISOB

"(1A) At any time when a special administration order is in force the Secretary of State or, with the consent of the Secretary of State, [the Water Services Regulation Authority] may apply to the High Court by petition for an order under this section on the ground that the special administrator has exercised or is exercising, or proposing to exercise, his powers in relation to the company in a manner which—

(a) will not best ensure the achievement of the purposes of the order; or

(b) without prejudice to paragraph (a) above, involves either a contravention of the conditions of the company's appointment under Chapter I of Part II of the Water Industry Act 1991 [or its licence under Chapter 1A of that Part] or of any statutory or other requirement imposed on the company in consequence of that appointment [or licence]."

[ISOE

(3) In subsection (3) (order not to prejudice or prevent voluntary arrangements or administrator's proposals), for paragraphs (a) and (b) there shall be substituted the words "the achievement of the purposes of the order".

(4) Subsections (4)(d) and (6) (power of court to order discharge) shall be omitted.

NOTES

Derivation

This Schedule derived from the Water Act 1989, Sch 6.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Part does not extend to Scotland: see s 223(3).

Amendment

Paras 3, 7–10: words "the Water Services Regulation Authority" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Para 4: in sub-para (a) words "or a licence under Chapter 1A of that Part" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 52(1), (2)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Para 4: in sub-para (b) words "articles of association" in square brackets substituted by SI 2009/1941, art 2(1), Sch 1, para 126(1), (4).

Date in force: 1 October 2009: see SI 2009/1941, art 1(2).

Para 4: in sub-para (b) words "or licence" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 52(1), (2)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

Para 10: in sub-para (2) words "or its licence under Chapter 1A of that Part" in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 52(1), (3)(a).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

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Para 10: in sub-para (2) words “or licence” in square brackets inserted by the Water Act 2003, s 101(1), Sch 8, paras 2, 52(1), (3)(b).

Date in force: 1 December 2005: see SI 2005/2714, art 3(c).

See Further

See further, in relation to the application of this Schedule, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 7(4).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Part II
Supplemental

General adaptations and saving

11

(1) Subject to the preceding provisions of this Schedule, references in the 1986 Act (except in sections 8 to 10 and 24 to 26), or in any other enactment passed before 6th July 1989, to an administration order under Part II of that Act, to an application for such an order and to an administrator shall include references, respectively, to a special administration order, to an application for a special administration order and to a special administrator.

(2) Subject as aforesaid and to sub-paragraph (3) below, references in the 1986 Act, or in any other enactment passed before 6th July 1989, to an enactment contained in Part II of that Act shall include references to that enactment as applied by section 24 of this Act or Part I of this Schedule.

(3) Sub-paragraphs (1) and (2) above shall apply in relation to a reference in an enactment contained in Part II of the 1986 Act only so far as necessary for the purposes of the operation of the provisions of that Part as so applied.

(4) The provisions of this Schedule shall be without prejudice to the power conferred by section 411 of the 1986 Act (company insolvency rules), as modified by sub-paragraphs (1) and (2) above.

Interpretation

12

(1) In this Schedule “the 1986 Act” means the Insolvency Act 1986.

(2) In this Schedule, and in any modification of the 1986 Act made by this Schedule, “special administrator”, in relation to a special administration order, means any person appointed in relation to that order for the purposes of section 23(1) of this Act; and in any such modification “special administration order” has the same meaning as in this Act.

NOTES

Derivation

This Schedule derived from the Water Act 1989, Sch 6.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

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This Part does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the application of this Schedule, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 7(4).

[SCHEDULE 3A
THE CONSUMER COUNCIL FOR WATER]

NOTES

Amendment

Inserted by the Water Act 2003, s 35(2), Sch 2.

Date in force: 1 October 2005: by virtue of SI 2005/2714, art 2(a)(ii); for transitional provisions see art 5(1), Schedule, paras 4, 8 thereto.

[Section 27A(11)]

NOTES

Amendment

Inserted by the Water Act 2003, s 35(2), Sch 2.

Date in force: 1 October 2005: by virtue of SI 2005/2714, art 2(a)(ii); for transitional provisions see art 5(1), Schedule, paras 4, 8 thereto.

[Membership of Council

1

(1) The Council shall consist of—

(a) a chairman appointed by the Secretary of State;

(b) one other member appointed by the Assembly; and

(c) such other members as may be appointed by the Secretary of State.

(2) The Secretary of State shall consult the Assembly before appointing the chairman.

(3) The Secretary of State and the Assembly shall consult the chairman before appointing any other member.

(4) An appointment under this paragraph shall be for a term not exceeding five years.

(5) In appointing persons under this paragraph the Secretary of State and the Assembly shall have regard to the desirability of including among the members one or more persons who—

(a) have experience of work among, and the special needs of, disabled persons; or

(b) have or have had a disability.

2

(1) A person holding office as chairman or other member may resign that office by giving notice to the Secretary of State (in the case of a member appointed by him), or to the Assembly (in the case of a member appointed by the Assembly).

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(2) The Secretary of State may remove any person appointed by him from office as chairman or other member on the ground of incapacity or misbehaviour.

(3) The Secretary of State shall consult the Assembly before removing any person appointed by him as chairman.

(4) The Assembly may remove any person appointed by it from office as member on the ground of incapacity or misbehaviour.

(5) Otherwise, the chairman and other members shall hold and vacate office as such in accordance with the terms of their respective appointments.

(6) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.

Terms of appointment, remuneration, pensions etc

3

The Council shall pay to the chairman and other members of the Council such remuneration, and such travelling and other allowances, as the Secretary of State may determine.

4

(1) If the Secretary of State so determines in the case of any holder of the office of chairman or other member, the Council shall pay—

(a) such pension, allowance or gratuity to or in respect of him, or

(b) such contributions or payments towards provision for such a pension, allowance or gratuity,

as the Secretary of State may determine.

(2) If, when any person ceases to hold office as chairman or other member, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.

Members appointed by Assembly

5

In relation to any member of the Council appointed by the Assembly, the matters mentioned in paragraphs 3 and 4 above shall be determined by the Assembly instead of by the Secretary of State.

Staff

6

(1) The Council shall, with the approval of the Secretary of State, appoint a principal officer on such terms of employment as it may, with that approval, determine.

(2) The Council may, with the approval of the Secretary of State as to numbers and terms of employment, appoint such other employees as it may determine.

(3) The persons to whom section 1 of the Superannuation Act 1972 (persons to or in respect of

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whom benefits may be provided by schemes under that section) applies shall include employees of the Council.

(4) The Council shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (3) above in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Annual reports

7

(1) As soon as practicable after the end of each financial year the Council shall report to the Secretary of State on its activities during the year.

(2) The annual report for each year shall include a report on the progress of the projects described in the Council's forward work programme for that year.

(3) In making any report under this paragraph the Council shall not include any information which relates to the affairs of a particular individual or body of persons (corporate or unincorporate) unless one or more of paragraphs (a) to (c) of sub-paragraph (4) below applies to the information.

(4) Information relating to a particular individual or body may be included in the report if—

(a) that individual or body has consented to its inclusion;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

(5) Before deciding to include any information relating to a particular individual or body in pursuance of sub-paragraph (4)(c) above, the Council shall—

(a) consult that person or body; and

(b) have regard to any opinion expressed by the Authority as to the application of sub-paragraph (4)(c) above to the information or as to the desirability or otherwise of its publication,

and paragraph (b) applies whether the opinion is given in relation to information itself or to information of a description which applies to that information.

(6) In making any report under this paragraph the Council shall not include any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(7) In considering whether information relates to any matter as mentioned in sub-paragraph (6) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

(8) The Secretary of State shall lay a copy of each annual report of the Council before each House of Parliament.

(9) The Council shall send a copy of each annual report to the Authority and the Assembly and shall arrange for the report to be published in such further manner as it considers appropriate.

Financial provisions and accounts

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8

(1) It shall be the duty of the Council to comply with any notice given by the Secretary of State requiring it to perform duties of a financial nature specified in the notice.

(2) The Secretary of State shall consult the Assembly before giving any notice to the Council under sub-paragraph (1) above.

9

(1) The Council shall prepare, in respect of each financial year, a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Council.

(2) The statement of accounts shall comply with any requirement which the Secretary of State has notified to the Council.

(3) The Council shall, within such period after the end of the financial year to which it relates as the Secretary of State may specify by notice given to the Council, send copies of each statement of accounts of the Council to—

(a) the Secretary of State and the Assembly; and

(b) the Comptroller and Auditor General.

(4) The Comptroller and Auditor General shall—

(a) examine, certify and report on every statement sent to him under sub-paragraph (3) above; and

(b) lay a copy of the statement and of his report before each House of Parliament.

10

The Secretary of State and the Assembly shall pay to the Council such sums as he or it thinks fit to enable it to meet its expenses.

Regional committees

11

(1) The Council shall not establish or abolish a regional committee, or alter the allocation of a relevant undertaker to a regional committee, without the approval of the appropriate authority.

(2) If the Council proposes to do anything mentioned in sub-paragraph (1) above it shall, after consulting the appropriate authority, give notice—

(a) describing its proposals; and

(b) specifying the time from the date of the notice (not being less than two months) within which representations may be made with respect to the proposals;

and shall consider any representations that are duly made and not withdrawn.

(3) A notice under sub-paragraph (2) above shall be given by publishing it in such manner as the Council considers appropriate for bringing the proposals to the attention of those likely to be affected.

(4) An appropriate authority shall not give its approval under sub-paragraph (1) above until after the

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time specified in the notice under sub-paragraph (2) above.

12

(1) A regional committee of the Council shall consist of—

(a) a chairman appointed by the appropriate authority;

(b) such other members as the Council may appoint.

(2) Any regional committee may establish sub-committees.

(3) The members of a regional committee of the Council may include persons who are not members of the Council (and the members of a sub-committee of the committee may include persons who are not members of the committee or the Council).

(4) In appointing members of a regional committee the Council shall take account of any guidance given to them by the appropriate authority.

(5) The Council may pay to the chairman and other members of a regional committee, or a sub-committee, such remuneration, and such travelling and other allowances, as the appropriate authority may determine.

13

(1) If the appropriate authority so determines in the case of any holder of the office of chairman or other member of a regional committee, or of any sub-committee of a regional committee, the Council shall pay—

(a) such pension, allowance or gratuity to or in respect of him; or

(b) such contributions or payments towards provision for such a pension, allowance or gratuity,

as the appropriate authority may determine.

(2) If, when any person ceases to hold office as chairman or other member of a regional committee, the appropriate authority determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the appropriate authority.

14

In paragraphs 11 to 13 above the "appropriate authority" means—

(a) the Assembly, in relation to committees established (or proposed to be established) for relevant undertakers whose areas are wholly or mainly in Wales, to sub-committees of those committees, and to any relevant undertaker whose area is wholly or mainly in Wales;

(b) the Secretary of State, in relation to committees established (or proposed to be established) for other relevant undertakers, to sub-committees of those committees, and to any other relevant undertaker.

Other committees

15

(1) The Council may establish committees other than regional committees and any such committee

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may establish sub-committees.

(2) The members of any such committee may include persons who are not members of the Council (and the members of a sub-committee may include persons who are not members of the relevant committee or the Council).

(3) The Council may pay to the chairman and other members of any such committee, or of a sub-committee, such remuneration, and such travelling and other allowances, as the Secretary of State may determine.

16

(1) If the Secretary of State so determines in the case of any holder of the office of chairman or other member of any such committee, or of any sub-committee of such a committee, the Council shall pay—

(a) such pension, allowance or gratuity to or in respect of him; or

(b) such contributions or payments towards provision for such a pension, allowance or gratuity,

as the Secretary of State may determine.

(2) If, when any person ceases to hold office as chairman or other member of any such committee, or of any sub-committee of such a committee, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Council shall pay to him a sum by way of compensation of such amount as may be determined by the Secretary of State.

Performance of functions of the Council

17

Anything authorised or required to be done by the Council may be done by any member or employee of the Council who, or any regional or other committee of the Council which, is authorised for the purpose by the Council (whether generally or specially).

18

The validity of anything done by the Council is not affected by a vacancy among its members or by a defect in the appointment of a member.

Supplementary powers

19

(1) The Council shall have power to do anything which is calculated to facilitate, or is incidental or conducive to, the performance of any of its functions.

(2) That power includes, among other things, power to enter into agreements and to acquire and dispose of property.

(3) The Council may make charges for facilities or services provided by it at the request of any person.

First financial year of the Council

20

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(1) If the period beginning with the day on which the Council is established and ending with the next 31st March is six months or more, the first financial year of the Council is that period.

(2) If the period mentioned in sub-paragraph (1) above is less than six months, the first financial year of the Council is the period beginning with the day on which the body is established and ending with 31st March in the following year.

Compensation for members of customer service committees

21

The Authority may pay to any person who immediately before the abolition by the Water Act 2003 of a customer service committee established under section 28(1) of this Act is the chairman of that body such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Secretary of State may determine.]

NOTES

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Act 2003, s 35(2), Sch 2.

Date in force: 1 October 2005: by virtue of SI 2005/2714, art 2(a)(ii); for transitional provisions see art 5(1), Schedule, paras 4, 8 thereto.

See Further

See further, in relation to the application of this Schedule, for the purposes of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 7(4).

SCHEDULE 4

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 35(4), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(a)(ii), (m)(i).

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 35(4), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(a)(ii), (m)(i).

. . .

NOTES

Amendment

Repealed by the Water Act 2003, ss 35(4), 101(2), Sch 9, Pt 2.

Date in force: 1 October 2005: see SI 2005/2714, art 2(a)(ii), (m)(i).

[SCHEDULE 4ZA

APPLICATION OF PROVISIONS OF ENTERPRISE ACT 2002 TO MERGERS OF WATER

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ENTERPRISES]

NOTES

Amendment

Inserted by the Enterprise Act 2002, s 70(2), Sch 6.

Date in force: 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 1–6.

[Section 34]

NOTES

Amendment

Inserted by the Enterprise Act 2002, s 70(2), Sch 6.

Date in force: 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 1–6.

[1

Part 3 of the 2002 Act (and any other provisions of that Act so far as relating to that Part) shall apply, with such prescribed modifications as the Secretary of State considers to be necessary or expedient, in relation to water mergers and merger references under section 32 of this Act as it applies in relation to relevant merger situations and references under Part 3 of that Act.

2

The modifications made by virtue of paragraph 1 above shall include modifications to give effect to paragraphs [2A to 6] below.

[2A

Where a reference is made to the chair of the CMA under section 32 for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA in relation to the matter are to be carried out on behalf of the CMA by the group so constituted in any case where those functions would be carried out by a group so constituted in relation to a reference under Part 3 of that Act.]

3

(1) The first questions to be decided by the [CMA] on a merger reference under section 32(a) of this Act shall be—

(a) whether arrangements are in progress which, if carried into effect, will result in a water merger; and

(b) if so, whether that merger may be expected to prejudice the ability of [the Authority], in carrying out [its] functions by virtue of this Act, to make comparisons between different water enterprises.

(2) The first questions to be decided by the [CMA] on a merger reference under section 32(b) of this Act shall be—

(a) whether a water merger has taken place; and

(b) if so, whether that merger has prejudiced, or may be expected to prejudice, the ability of [the

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Authority], in carrying out [its] functions by virtue of this Act, to make comparisons between different water enterprises.

(3) Any decision of the [CMA] on a merger reference under section 32(a) of this Act that arrangements are in progress which, if carried into effect, will result in a water merger shall be treated as a decision that no arrangements are in progress which, if carried into effect, will result in a water merger if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference [under Schedule 4 to the Enterprise and Regulatory Reform Act 2013].

(4) Any decision of the [CMA] on a merger reference under section 32(a) of this Act that a water merger may be expected to prejudice the ability of [the Authority], in carrying out [its] functions by virtue of this Act, to make comparisons between different water enterprises shall be treated as a decision that the water merger may be expected not to prejudice that ability of [the Authority] if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference [under Schedule 4 to the Enterprise and Regulatory Reform Act 2013].

(5) Any decision of the [CMA] on a merger reference under section 32(b) of this Act that a water merger has taken place shall be treated as a decision that no water merger has taken place if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference [under Schedule 4 to the Enterprise and Regulatory Reform Act 2013].

(6) Any decision of the [CMA] on a merger reference under section 32(b) of this Act that a water merger has prejudiced, or may be expected to prejudice, the ability of [the Authority], in carrying out [its] functions by virtue of this Act, to make comparisons between different water enterprises shall be treated as a decision that the water merger has not prejudiced, or may be expected not to prejudice, that ability of [the Authority] if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference [under Schedule 4 to the Enterprise and Regulatory Reform Act 2013].

4

(1) In deciding, on a merger reference under section 32(a) of this Act whether to take action for the purpose of remedying, mitigating or preventing the prejudice to [the Authority] or any adverse effect which may be expected to result from the prejudice to [the Authority] and, if so, what action should be taken, the [CMA] may, in particular, have regard to the effect of any such action on any relevant customer benefits in relation to the merger concerned provided that—

(a) a consideration of those benefits would not prevent a solution to the prejudice concerned; or

(b) the benefits which may be expected to accrue are substantially more important than the prejudice concerned.

(2) In deciding, on a merger reference under section 32(b) of this Act whether to take action for the purpose of remedying, mitigating or preventing the prejudice to [the Authority] or any adverse effect which has resulted from, or may be expected to result from, the prejudice to [the Authority] and, if so, what action should be taken, the [CMA] may, in particular, have regard to the effect of any such action on any relevant customer benefits in relation to the merger concerned provided that—

(a) a consideration of those benefits would not prevent a solution to the prejudice concerned; or

(b) the benefits which have accrued, or may be expected to accrue, are substantially more important than the prejudice concerned.

(3) This paragraph is without prejudice to the power of the Secretary of State to provide in regulations made under paragraph 1 above for other matters to which the [CMA] may or must have regard in deciding the questions as mentioned in sub-paragraph (1) or (2) above (including matters which are to take priority over the effect of action on relevant customer benefits).

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5

(1) No enforcement action shall be taken on a merger reference under section 32(b) of this Act in respect of an actual merger unless the reference was made within the period of four months beginning with whichever is the later of—

(a) the day on which the merger took place; and

(b) the day on which the material facts about the transactions which resulted in the merger first came to the attention of the [CMA] or were made public (within the meaning given by section 24(3) of the 2002 Act).

(2) This paragraph is without prejudice to the power of the Secretary of State to provide in regulations made under paragraph 1 above for extensions of the four month period; and, if any such provision is made in such regulations, the provision which is to be made in regulations under paragraph 1 above by virtue of sub-paragraph (1) above or paragraph 6 below may be adjusted accordingly.

6

If, on a merger reference under section 32(b) of this Act, the [CMA] are satisfied that the reference was not made within the period of four months mentioned in paragraph 5 above, its report on the reference shall state that fact.

7

(1) For the purposes of this Schedule a benefit is a relevant customer benefit if—

(a) it is a benefit to relevant customers in the form of—

(i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom; or

(ii) greater innovation in relation to such goods or services; and

(b) the [CMA] believes—

(i) in the case of a merger reference under section 32(a) of this Act, as mentioned in sub-paragraph (2) below; and

(ii) in the case of a merger reference under section 32(b) of this Act, as mentioned in sub-paragraph (3) below.

(2) The belief, in the case of a merger reference under section 32(a) of this Act, is that—

(a) the benefit may be expected to accrue within a reasonable period as a result of the merger concerned; and

(b) the benefit is unlikely to accrue without the merger concerned or a similar prejudice to [the Authority].

(3) The belief, in the case of a merger reference under section 32(b) of this Act is that—

(a) the benefit has accrued as a result of the merger concerned or may be expected to accrue within a reasonable period as a result of the merger concerned; and

(b) the benefit was, or is, unlikely to accrue without the merger concerned or a similar prejudice to [the Authority].

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(4) In sub-paragraph (1) above "relevant customers" means—

(a) customers of any person carrying on an enterprise which, in the merger concerned, has ceased to be, or (as the case may be) will cease to be, a distinct enterprise;

(b) customers of such customers; and

(c) any other customers in a chain of customers beginning with the customers mentioned in paragraph (a);

and in this sub-paragraph "customers" includes future customers.

8

In this Schedule—

"customers", "goods", "market in the United Kingdom", "services" and "relevant merger situation" have the same meanings as in Part 3 of the 2002 Act; and

"water merger" means a merger of any two or more water enterprises.]

NOTES

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Enterprise Act 2002, s 70(2), Sch 6.

Date in force: 29 December 2004: see SI 2004/3233, art 2, Schedule; for effect, transitional and transitory provisions and savings see arts 3–5 thereof and the Enterprise Act 2002, s 276, Sch 24, paras 1–6.

Para 2: words "2A to 6" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (2).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 2A: inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (3).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 3: in sub-paras (1), (2) reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (4)(a).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Paras 3, 4, 7: words "the Authority" and "its" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Para 3: in sub-paras (3)–(6) reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (4)(b)(i).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 3: in sub-para (3) words "under Schedule 4 to the Enterprise and Regulatory Reform Act 2013" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (4)(b)(ii).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 3: in sub-para (4) words "under Schedule 4 to the Enterprise and Regulatory Reform Act 2013" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (4)(b)(ii).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

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Para 3: in sub-para (5) words “under Schedule 4 to the Enterprise and Regulatory Reform Act 2013” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (4)(b)(ii).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 3: in sub-para (6) words “under Schedule 4 to the Enterprise and Regulatory Reform Act 2013” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (4)(b)(ii).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 4: in sub-paras (1)–(3) reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (5).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 5: in sub-para (1)(b) reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (6).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 6: reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (7).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Para 7: in sub-para (1)(b) reference to “CMA” in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 93(1), (7).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Subordinate Legislation

Water Mergers (Modification of Enactments) Regulations 2004, SI 2004/3202 (made under paras 1, 2).

[SCHEDULE 4A
PREMISES THAT ARE NOT TO BE DISCONNECTED FOR NON-PAYMENT OF CHARGES]

NOTES

Amendment

Inserted by the Water Industry Act 1999, s 1(2), Sch 1.

Date in force: 30 June 1999: see the Water Industry Act 1999, s 17(2)(a).

[Section 63A]

NOTES

Amendment

Inserted by the Water Industry Act 1999, s 1(2), Sch 1.

Date in force: 30 June 1999: see the Water Industry Act 1999, s 17(2)(a).

[1

(1) Any dwelling which is occupied by a person as his only or principal home.

(2) In this paragraph “dwelling” means—

(a) a private dwelling-house (which may be a building or part of a building),

(b) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 (disregarding the amendment made by section 13(2) of the Caravan Sites Act 1968), or

(c) a boat or similar structure designed or adapted for use as a place of permanent habitation.

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2

(1) Any house in multiple occupation which does not constitute a dwelling within the meaning of paragraph 1 above and in which any person has his only or principal home.

[(2) In this paragraph "house in multiple occupation" means a house in multiple occupation as defined by sections 254 to 259 of the Housing Act 2004, as they have effect for the purposes of Part 1 of that Act (that is, without the exclusions contained in Schedule 14 to that Act).]

3

(1) Accommodation for the elderly in which a person has his only or principal home.

(2) In this paragraph "accommodation for the elderly" means residential accommodation to which sub-paragraph (3) or (4) below applies, but which is not a dwelling within the meaning of paragraph 1 above or a house in multiple occupation within the meaning of paragraph 2 above.

(3) This sub-paragraph applies to residential accommodation—

(a) which is particularly suitable, having regard to its location, size, design, heating systems and other features, for occupation by elderly persons,

(b) which it is the practice of the landlord to let for occupation by persons aged 60 or more, and

(c) where the services of a warden are provided.

(4) This sub-paragraph applies to any building or part of a building designed or adapted for use as residential accommodation for elderly persons.

[4

A hospital as defined by section 275 of the National Health Service Act 2006 in relation to England or section 206 of the National Health Service (Wales) Act 2006 in relation to Wales.]

5

Premises used for the provision of medical services by a registered medical practitioner.

6

Premises used for the provision of dental services by a person who under the Dentists Act 1984 is permitted to practise dentistry.

[7

Premises not falling within paragraph 5 or 6 above which are used for the provision of primary medical services or primary dental services under [the National Health Service Act 2006 or the National Health Service (Wales) Act 2006]].

[8

(1) A care home or independent hospital.

(2) In this paragraph—

"care home" means—

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(a) a care home within the meaning of the Care Standards Act 2000;

(b) a building or part of a building in which residential accommodation is provided under section 21 of the National Assistance Act 1948;

. . ..

[(3) In this paragraph "independent hospital", in relation to England, means—

(a) an establishment, not being a health service hospital as defined by section 275 of the National Health Service Act 2006,—

(i) the main purpose of which is to provide medical or psychiatric treatment for illness or mental disorder or palliative care; or

(ii) in which (whether or not other services are provided) any of the services listed in sub-paragraph (5) are provided; or

(b) any other establishment, not being a health service hospital as so defined, in which treatment or nursing (or both) are provided for persons liable to be detained under the Mental Health Act 1983.

(4) In this paragraph "independent hospital", in relation to Wales, means an independent hospital within the meaning of the Care Standards Act 2000.

(5) The services referred to in sub-paragraph (3)(a)(ii) are as follows—

(a) medical treatment under anaesthesia or intravenously administered sedation;

(b) dental treatment under general anaesthesia;

(c) obstetric services and, in connection with childbirth, medical services;

(d) termination of pregnancies;

(e) cosmetic surgery, other than—

(i) ear and body piercing,

(ii) tattooing,

(iii) the subcutaneous injection of a substance or substances into the skin for cosmetic purposes, or

(iv) the removal of hair roots or small blemishes on the skin by the application of heat using an electric current.

(6) In sub-paragraph (3)(a)(i)—

(a) "illness" includes any injury; and

(b) "mental disorder" has the same meaning as in the Mental Health Act 1983.]

9

A children's home within the meaning of the Care Standards Act 2000.]

10

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A school within the meaning of the Education Act 1996.

[10A

A 16 to 19 Academy.]

11

(1) Premises used by an institution within the further education sector or an institution within the higher education sector for, or in connection with, the provision of education.

(2) In this paragraph the references to an institution within the further education sector or within the higher education sector are to be construed in accordance with section 91 of the Further and Higher Education Act 1992.

[12

(1) Premises in England which are used for the provision of childcare by a person who is registered (otherwise than as a childminder) under Part 3 of the Childcare Act 2006 in respect of the premises.

(2) Premises in Wales which are used for the provision of day care for children by a person who is registered under *Part 10A of the Children Act 1989* [Part 2 of the Children and Families (Wales) Measure 2010] in respect of the premises.]

13

(1) A prison or [removal centre].

(2) In this paragraph "prison" means—

(a) any prison, young offender institution or remand centre which is under the general superintendence of, or is provided by, the Secretary of State under the Prison Act 1952, including a contracted out prison within the meaning of Part IV of the Criminal Justice Act 1991,

(b) any secure training centre . . .

[(ba) a secure college, or]

(c) a naval, military or air force prison.

(3) In this paragraph "[removal centre]" means any premises which are used solely for detaining persons under the Immigration Act 1971 or the [Nationality, Immigration and Asylum Act 2002], but which are not a part of a prison.

14

Premises occupied for the purposes of a police force.

15

Premises occupied for the purposes of a [fire and rescue authority].

16

Premises occupied for the purposes of the provision of an ambulance service by a National Health Service trust established under [the National Health Service Act 2006 or the National Health Service

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(Wales) Act 2006] [or by an NHS foundation trust].]

NOTES

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Inserted by the Water Industry Act 1999, s 1(2), Sch 1.

Date in force: 30 June 1999: see the Water Industry Act 1999, s 17(2)(a).

Para 2: sub-para (2) substituted by the Housing Act 2004, s 265(1), Sch 15, para 36.

Date in force (in relation to England): 6 April 2006: see SI 2006/1060, arts 1(3)(c), 2(1)(d).

Date in force (in relation to Wales): 16 June 2006: see SI 2006/1535, arts 1(2)(c), 2(b).

Para 4: substituted by SI 2010/750, art 2.

Date in force: 6 April 2010: see SI 2010/750, art 1(1).

Para 7: substituted by the Health and Social Care (Community Health and Standards) Act 2003, s 184, Sch 11, para 58.

Date in force (in relation to England): 1 April 2004: see SI 2004/288, art 5(1), (2)(v).

Date in force (in relation to Wales): 1 April 2004: see SI 2004/480, art 4(1), (2)(z).

Para 7: words “the National Health Service Act 2006 or the National Health Service (Wales) Act 2006” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 137, 139(a).

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Paras 8, 9: substituted by the Care Standards Act 2000, s 116, Sch 4, para 18.

Date in force (in relation to England): 1 April 2002: see SI 2001/4150, art 3(3)(a); for transitional provisions see SI 2001/4150, arts 3(2), 4(1), (3), (4) and SI 2002/1493, art 4 (as amended by SI 2002/1493, art 6).

Date in force (in relation to Wales): 1 April 2002: see SI 2002/920, art 3(3)(d); for transitional provisions see arts 2, 3(2), (4), (6)–(10), Sch 1 thereto.

Para 8: in sub-para (2) definition “independent hospital” (omitted) repealed by SI 2010/2224, art 2(a).

Date in force: 1 October 2010: see SI 2010/2224, art 1(1).

Para 8: sub-paras (3)–(6) inserted by SI 2010/2224, art 2(b).

Date in force: 1 October 2010: see SI 2010/2224, art 1(1).

Para 10A: inserted by the Education Act 2011, s 54(1), Sch 13, para 7.

Date in force: 1 April 2012: see SI 2012/924, art 2.

Para 12: substituted by the Childcare Act 2006, s 103(1), Sch 2, para 19.

Date in force: 6 April 2007: see SI 2007/1019, art 4; for savings see art 6, Schedule, para 4 thereto.

Para 12: in sub-para (2) words “Part 10A of the Children Act 1989” in italics repealed and subsequent words in square brackets substituted, in relation to Wales, by the Children and Families (Wales) Measure 2010, s 72, Sch 1, paras 8, 9.

Date in force: 1 April 2011: see SI 2010/2582, art 2, Sch 1; for savings see art 4, Sch 2 thereto.

Para 13: in sub-paras (1), (3) words “removal centre” in square brackets substituted by the Nationality, Immigration and Asylum Act 2002, s 66(2)(a), (3)(p).

Date in force: 10 February 2003: see SI 2003/1, art 2, Schedule.

Para 13: in sub-para (2)(b) words omitted repealed by the Criminal Justice and Courts Act 2015, s 38(3), Sch 9, para 10(a).

Date in force: 20 March 2015: see SI 2015/778, art 2(1)(c).

Para 13: sub-para (2)(ba) inserted by the Criminal Justice and Courts Act 2015, s 38(3), Sch 9, para 10(b).

Date in force: 20 March 2015: see SI 2015/778, art 2(1)(c).

Para 13: in sub-para (3) words “Nationality, Immigration and Asylum Act 2002” in square brackets substituted by SI 2003/1016, art 3, Schedule, para 5.

Date in force: 4 April 2003: see SI 2003/1016, art 2(2).

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Para 15: words “fire and rescue authority” in square brackets substituted by the Fire and Rescue Services Act 2004, s 53(1), Sch 1, paras 75, 78.

Date in force (in relation to England): 1 October 2004: see SI 2004/2304, art 2(2).

Date in force (in relation to Wales): 10 November 2004: see SI 2004/2917, art 2.

Para 16: words “the National Health Service Act 2006 or the National Health Service (Wales) Act 2006” in square brackets substituted by the National Health Service (Consequential Provisions) Act 2006, s 2, Sch 1, paras 137, 193(b).

Date in force: 1 March 2007: see the National Health Service (Consequential Provisions) Act 2006, s 8(2).

Para 16: words “or by an NHS foundation trust” in square brackets inserted by the Health and Social Care (Community Health and Standards) Act 2003, s 34, Sch 4, paras 89, 90.

Date in force: 1 April 2004: see SI 2004/759, art 2.

SCHEDULE 5

PROCEDURE FOR ORDERS RELATING TO PRESSURE AND CONSTANCY OF SUPPLY

Section 65

Applications for orders

1

(1) Where [the Authority] or a water undertaker applies to the Secretary of State for an order under section 65(5) of this Act, the applicant shall—

(a) submit to the Secretary of State a draft of the order applied for;

(b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in the locality which would be affected by the provision proposed to be made by the order;

(c) not later than the date on which that notice is first published serve a copy of the notice on every affected local authority and every affected water undertaker; and

(d) publish a notice in the London Gazette which—

(i) states that the draft order has been submitted to the Secretary of State;

(ii) names every local authority on whom a notice is required to be served under this paragraph;

(iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and

(iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.

(2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order shall—

(a) state the general effect of the order applied for;

(b) specify a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of the first publication of the notice; and

(c) state that any person may, within that period, by notice to the Secretary of State object to the

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making of the order.

(3) For the purposes of subsection (1)(c) above a local authority or a water undertaker which is not the applicant shall be affected by an application for an order if its area includes the whole or any part of the locality which would be affected by the provision proposed to be made by the order.

Supply of copies of draft orders

2

The applicant for an order under section 65(5) of this Act shall, at the request of any person and on payment by that person of such charge (if any) as the applicant may reasonably require, furnish that person with a copy of the draft order submitted to the Secretary of State under paragraph 1 above.

Modifications of proposals

3

(1) On an application for an order under section 65(5) of this Act, the Secretary of State may make the order either in the terms of the draft order submitted to him or, subject to sub-paragraph (2) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.

(2) The Secretary of State shall not make such a modification of a draft order submitted to him as he considers is likely adversely to affect any persons unless he is satisfied that the applicant for the order has given and published such additional notices, in such manner, as the Secretary of State may have required.

Consideration of objections etc

4

Where an application for an order to which this Schedule applies has been made, the Secretary of State may, if he considers it appropriate to do so, hold a local inquiry before making any order on the application.

NOTES

Derivation

This Schedule derived from the Water Act 1989, Sch 7.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Para 1: in sub-para (1) words “the Authority” in square brackets substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended by the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 4, Sch 3(e)) provides that, subject to art 2(b) to (f) of the 1999 Order, the functions of a Minister of the Crown under this Schedule are transferred to the National Assembly for Wales with respect to both water supply and

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sewerage, in relation to any water or sewerage undertaker whose area is wholly or mainly in Wales.

SCHEDULE 6
SUPPLEMENTAL PROVISIONS RELATING TO RIGHTS OF ENTRY

Sections 71–84, 162–172

Part I
Rights Requiring Notice for Entry to Non-business Premises

Notice of entry

1

(1) Where this Part of this Schedule applies to any right of entry conferred by a provision of this Act, admission to any premises which are not business premises shall not be demanded as of right by virtue of that provision, unless twenty-four hours notice of the intended entry has been given to the occupier of the premises.

(2) In this paragraph "business premises" means—

(a) any factory; or

(b) any place in which persons are employed otherwise than in domestic service;

and in this sub-paragraph "factory" has the same meaning as in the Factories Act 1961.

Warrants to exercise right

2

(1) Subject to sub-paragraph (3) below, if it is shown to the satisfaction of a justice of the peace, on sworn information in writing—

(a) that any one or more of the conditions specified in sub-paragraph (2) below is fulfilled in relation to any premises which a person is entitled to enter by virtue of a right of entry to which this Part of this Schedule applies; and

(b) that there is reasonable ground for entry to the premises for any purpose for which the right is exercisable,

the justice may by a warrant under his hand authorise that person to enter the premises, if need be by force.

(2) The conditions mentioned in sub-paragraph (1) above are—

(a) that admission to the premises has been refused to the person having the right to enter them;

(b) that such refusal is apprehended;

(c) that the premises are unoccupied or the occupier is temporarily absent;

(d) that the case is one of urgency;

(e) that an application for admission would defeat the object of the entry.

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(3) A warrant under this Part of this Schedule shall not be issued by a justice of the peace in a case in which he is satisfied that the condition mentioned in paragraph (a) or (b) of sub-paragraph (2) above is fulfilled unless he is also satisfied—

(a) that notice of the intention to apply for a warrant has been given to the occupier;

(b) that a condition mentioned in either of paragraphs (c) and (d) of that sub-paragraph is also fulfilled in relation to the premises; or

(c) that the giving of such notice as is mentioned in paragraph (a) above would defeat the object of the entry.

(4) Every warrant under this Part of this Schedule shall continue in force until the purpose for which the entry is necessary has been fulfilled.

(5) A person leaving any unoccupied premises which he has entered by virtue of a warrant under this Part of this Schedule shall leave them as effectually secured against trespassers as he found them.

Supplementary power of person making entry

3

Any person entitled to enter any premises by virtue of a right to which this Part of this Schedule applies, or of a warrant under this Part of this Schedule, may take with him such other persons as may be necessary.

Obstruction of person exercising right

4

Any person who wilfully obstructs any person upon whom a right of entry has been conferred by virtue of—

(a) any provision of this Act relating to a right of entry to which this Part of this Schedule applies; or

(b) a warrant under this Part of this Schedule,

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

Duty of persons exercising rights to maintain confidentiality

5

(1) Without prejudice to section 206 of this Act and subject to sub-paragraphs (2) and (3) below, any person who is admitted to any premises in compliance—

(a) with any provision of this Act relating to a right of entry to which this Part of this Schedule applies; or

(b) with a warrant under this Part of this Schedule,

shall be guilty of an offence under this paragraph if he discloses to any person any information obtained by him there with regard to any manufacturing process or trade secret.

(2) A person shall not be guilty of an offence under this paragraph in respect of any disclosure made

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in the performance of his duty.

(3) For the purposes of the application of this Part of this Schedule to the right conferred by section 171 of this Act, the reference to premises in subsection (1) above shall have effect as a reference only to business premises, within the meaning of paragraph 1 above.

(4) A person who is guilty of an offence under this paragraph, other than such a person as is mentioned in sub-paragraph (5) below, shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding three months or to a fine or to both.

(5) A person who is guilty of an offence under this paragraph by virtue of the application of this Part of this Schedule to the rights conferred by section 171 of this Act shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or to both.

NOTES

Derivation

Para 1 derived from the Water Act 1945, s 48(1), (2), and the Factories Act 1961, s 184, Sch 6, para 1; para 2(1)–(3) derived from the Water Act 1945, s 48(3); para 2(4) derived from the Water Act 1945, s 48(5), and the Public Health Act 1936, s 287(4); paras 2(5), 3 derived from the Water Act 1945, s 48(4), and the Public Health Act 1936, s 287(3); para 4 derived from the Public Health Act 1936, s 288, the Water Act 1945, s 48(7), and the Criminal Justice Act 1982, ss 35, 38, 42, 46; para 5 derived from the Public Health Act 1936, s 287(5), the Water Act 1945, s 48(6), the Criminal Law Act 1977, s 32(1), and the Magistrates' Courts Act 1980, s 32(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Part does not extend to Scotland: see s 223(3).

See Further

See further, in relation to summary offences no longer punishable with imprisonment: the Criminal Justice Act 2003, s 280(1), Sch 25, para 91.

Part II
Other Rights of Entry and Related Powers

Notice of entry

6

(1) Without prejudice to any power exercisable by virtue of a warrant under this Part of this Schedule, no person shall make an entry into any premises by virtue of any right or power to which this Part of this Schedule applies except—

(a) in an emergency; or

(b) at a reasonable time and after the required notice of the intended entry has been given to the occupier of the premises.

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(2) For the purposes of this paragraph the required notice is—

(a) in the case of the rights and powers conferred by virtue of any of sections 74(4), 84(2) and (3), 86(4) and 170(1)(c) and (3) of this Act, twenty-four hours' notice; and

(b) in any other case, seven days' notice.

(3) For the purposes of the application of this Part of this Schedule to any right or power conferred by section 168 of this Act the reference in sub-paragraph (1) above to an emergency—

(a) in relation to any entry to premises for the purposes of, or for purposes connected with, the exercise or proposed exercise of any power in relation to a street, includes a reference to any circumstances requiring the carrying out of emergency works within the meaning of Part III of the New Roads and Street Works Act 1991; and

(b) in relation to any other entry to premises, includes a reference to any danger to property and to any interruption of a supply of water provided to any premises by any person and to any interruption of the provision of sewerage services to any premises.

(4) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, sub-paragraph (3)(a) above shall have effect as if the reference to Part III of that Act were a reference to the Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

(5) For the purposes of the application of this Part of this Schedule to the rights and other powers conferred by section 172 of this Act sub-paragraph (1) above shall have effect as if the power in an emergency to make an entry to any premises otherwise than at a reasonable time and after the required notice were omitted.

Warrant to exercise right or power

7

(1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—

(a) that there are reasonable grounds for the exercise in relation to any premises of a right or power to which this Part of this Schedule applies; and

(b) that one or more of the conditions specified in sub-paragraph (2) below is fulfilled in relation to those premises,

the justice may by warrant authorise the relevant authority to designate a person who shall be authorised to exercise the right or power in relation to those premises in accordance with the warrant and, if need be, by force.

(2) The conditions mentioned in sub-paragraph (1)(b) above are—

(a) that the exercise of the right or power in relation to the premises has been refused;

(b) that such a refusal is reasonably apprehended;

(c) that the premises are unoccupied;

(d) that the occupier is temporarily absent from the premises;

(e) that the case is one of urgency; or

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(f) that an application for admission to the premises would defeat the object of the proposed entry.

(3) A justice of the peace shall not issue a warrant under this Part of this Schedule by virtue only of being satisfied that the exercise of a right or power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied—

(a) that notice of the intention to apply for the warrant has been given to the occupier of the premises; or

(b) that the giving of such a notice would defeat the object of the proposed entry.

(4) For the purposes of the application of this Part of this Schedule to the rights and powers conferred by section 169 of this Act in a case to which subsection (4) of that section applies, a justice of the peace shall not issue a warrant under this Part of this Schedule unless he is satisfied that the Secretary of State has given his authorisation for the purposes of that subsection in relation to that case.

(5) Every warrant under this Part of this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

Manner of exercise of right or power

8

A person designated as the person who may exercise any right or power to which this Part of this Schedule applies shall produce evidence of his designation and other authority before he exercises the right or power.

Supplementary powers of person making entry etc

9

A person authorised to enter any premises by virtue of any right or power to which this Part of this Schedule applies shall be entitled, subject in the case of a right or power exercisable under a warrant to the terms of the warrant, to take with him on to the premises such other persons and such equipment as may be necessary.

Duty to secure premises

10

A person who enters any premises in the exercise of any right or power to which this Part of this Schedule applies shall leave the premises as effectually secured against trespassers as he found them.

Compensation

11

(1) Where any person exercises any right or power to which this Part of this Schedule applies, it shall be the duty of the relevant authority to make full compensation to any person who has sustained loss or damage by reason of—

(a) the exercise by the designated person of that right or power or of any power to take any person or equipment with him when entering the premises in relation to which the right or power is exercised; or

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(b) the performance of, or failure of the designated person to perform, the duty imposed by paragraph 10 above.

(2) Compensation shall not be payable by virtue of sub-paragraph (1) above in respect of any loss or damage if the loss or damage—

(a) is attributable to the default of the person who sustained it; or

(b) is loss or damage in respect of which compensation is payable by virtue of any other provision of this Act.

(3) Any dispute as to a person's entitlement to compensation under this paragraph or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the relevant authority and the person who claims to have sustained the loss or damage or, in default of agreement—

(a) by the [Upper Tribunal] where the relevant authority is the Secretary of State; and

(b) by the Secretary of State, in any other case.

Obstruction of person exercising right or power

12

A person who intentionally obstructs another person acting in the exercise of any right or power to which this Part of this Schedule applies shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Interpretation of Part II

13

(1) In this Part of this Schedule "relevant authority", in relation to a right or power to which this Part of this Schedule applies, means the person who, by virtue of—

(a) the provision by which the right or power is conferred; or

(b) (except in paragraph 7 above) the warrant,

is entitled to designate the person by whom the right or power may be exercised.

(2) References in this Part of this Schedule, except in paragraph 7 above, to a right or power to which this Part of this Schedule applies include references to a right or power exercisable by virtue of a warrant under this Part of this Schedule.

(3) For the purposes of paragraphs 10 and 11 above a person enters any premises by virtue of a right or power to which this Part of this Schedule applies notwithstanding that he has failed (whether by virtue of the waiver of the requirement by the occupier of the premises or otherwise) to comply with—

(a) any requirement to enter those premises at a reasonable time or after giving notice of his intended entry; or

(b) the requirement imposed by paragraph 8 above.

NOTES

Derivation

Para 6(1), (2) derived from the Water Act 1989, ss 59(3), 60(5), 62(5), 64(4), (5), 156(6), Sch 10,

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para 1(6), Sch 19, para 10(4), Sch 21, para 5(4); para 6(3), (4) derived from the Water Act 1989, Sch 19, para 10(5), and the New Roads and Street Works Act 1991, Sch 8, para 122(4); para 6(5) derived from the Water Act 1989, Sch 10, para 1(6); para 7 derived from the Water Act 1989, s 178; paras 8–10, 12 derived from the Water Act 1989, s 179(2)–(4), (8); para 11 derived from the Water Act 1989, s 179(5), (6); para 13 derived from the Water Act 1989, s 179(7), (9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Part does not extend to Scotland: see s 223(3).

Amendment

Para 11: in sub-para (3)(a) words "Upper Tribunal" in square brackets substituted by SI 2009/1307, art 5(1), (2), Sch 1, paras 220, 221.

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under para 11(3)(b) above shall be exercisable by the National Assembly for Wales to the same extent as the powers, duties and other provisions to which that paragraph applies are exercisable by the Assembly.

SCHEDULE 7
PRE-1985 FLUORIDATION SCHEMES

NOTES

Amendment

Repealed by the Water Act 2003, ss 58(1), (9), 101(2), Sch 9, Pt 3.

Date in force (in relation to England): 26 March 2010: see SI 2010/975, art 2.

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Section 91

NOTES

Amendment

Repealed by the Water Act 2003, ss 58(1), (9), 101(2), Sch 9, Pt 3.

Date in force (in relation to England): 26 March 2010: see SI 2010/975, art 2.

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Operation of pre-1985 schemes

1

(1) Where in pursuance of any such arrangements entered into by a water authority or statutory water company before 20th December 1984 as have effect immediately before the coming into force of this Act as arrangements entered into by a water undertaker—

(a) a scheme for increasing the fluoride content of water supplied by the authority or company in any part of England and Wales was in operation immediately before that date; or

(b) work had been begun by the authority or company before that date for enabling such a scheme to be brought into operation,

that water undertaker may, while the conditions mentioned in sub-paragraph (2) below are satisfied,

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operate the scheme.

(2) The conditions referred to in sub-paragraph (1) above are that the arrangements require—

(a) fluoridation to be effected only by the addition of one or more of the compounds of fluorine mentioned in subsection (4) of section 87 of this Act; and

(b) the concentrations of fluoride in the water supplied to consumers to be maintained, so far as reasonably practicable, at one milligram per litre.

Supplies by other undertakers and revocation or variation of scheme

2

(1) Where a water undertaker is operating a fluoridation scheme by virtue of this Schedule—

(a) subsections (6) and (7) of section 87 of this Act shall apply in relation to the scheme as they apply in relation to any scheme operated in exercise of the power conferred by that section or section 1 of the Water (Fluoridation) Act 1985;

(b) the scheme shall cease to have effect upon the appropriate authority giving to the undertaker reasonable notice of the authority's desire to terminate it; and

(c) the arrangements under which the scheme is operated may be varied to take account of any amendment of section 87(2) of this Act which is made under section 88 of this Act.

(2) In this paragraph "appropriate authority", in relation to a fluoridation scheme which is operated under this Schedule, means the [*Strategic Health Authority or*] *[Health Authority] to which the water undertaker concerned is answerable in accordance with the arrangements under which the scheme is operated.*

Publicity and consultation

3

(1) Section 89 of this Act (including the power of the Secretary of State under subsection (6) of that section to dispense with the other requirements of that section) shall apply where a [*Strategic Health Authority or*] *[Health Authority] propose to terminate a scheme which may be operated by virtue of this Schedule as it applies where [a* [*Strategic Health Authority or*] *Health Authority] propose to withdraw an application under section 87 of this Act.*

(2) Accordingly, in subsection (7) of section 89 of this Act, the reference to the question whether an application under section 87 of this Act should be withdrawn shall be treated by virtue of sub-paragraph (1) above as a reference to whether a scheme should be terminated under this Schedule.

NOTES

Derivation

Para 1 derived from the Water (Fluoridation) Act 1985, ss 3(1), (2); para 2 derived from the Water (Fluoridation) Act 1985 Act, ss 3(3), 5(1); para 3 derived from the Water (Fluoridation) Act 1985, s 4(1).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Schedule does not extend to Scotland: see s 223(3).

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Amendment

Repealed by the Water Act 2003, ss 58(1), (9), 101(2), Sch 9, Pt 3.

Date in force (in relation to England): 26 March 2010: see SI 2010/975, art 2.

Date in force (in relation to Wales): to be appointed: see the Water Act 2003, s 105(3), (6).

Para 2: in sub-para (2) words “Strategic Health Authority or” in square brackets inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (4).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Para 2: in sub-para (2) words “Health Authority” in square brackets substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (4)(a).

Para 3: in sub-para (1) words “Strategic Health Authority or” in square brackets in both places they occur inserted by SI 2002/2469, reg 4, Sch 1, Pt 1, para 18(1), (4).

Date in force: 1 October 2002: see SI 2002/2469, reg 1.

Para 3: in sub-para (1) words “Health Authority” in square brackets in the first place they occur substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (4)(b)(i).

Para 3: in sub-para (1) words in square brackets ending with the words “Health Authority” substituted by the Health Authorities Act 1995, s 2(1), Sch 1, para 120(1), (4)(b)(ii).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 8
PRE-1989 ACT TRANSITIONAL AUTHORITY FOR TRADE EFFLUENT DISCHARGES ETC

Section 140

Trade effluent agreements

1

Nothing in Chapter III of Part IV of this Act (except so far as it relates to special category effluent) or in the repeals made by the Water Consolidation (Consequential Provisions) Act 1991 shall affect—

(a) any agreement with respect to any trade effluent to which a sewerage undertaker is a party by virtue of its having been duly made before 1st July 1937 between a predecessor of the undertaker and the owner or occupier of any trade premises; or

(b) any agreement saved by section 63(8) of the Public Health Act 1961 (pre-1961 Act agreements with respect to discharges from premises used for farming or for scientific research or experiment).

Authorisations having effect as deemed consents under the Control of Pollution Act 1974

2

(1) Where, by virtue of section 43(2) of the Control of Pollution Act 1974 there is, immediately before the commencement of this Act, a deemed consent for the purposes of the Public Health (Drainage of Trade Premises) Act 1937 which has effect under the Water Act 1989 in relation to any sewerage undertaker, that deemed consent shall have effect as a deemed consent for the purposes of Chapter III of Part IV of this Act subject to the following provisions of this paragraph.

(2) The sewerage undertaker—

(a) may at any time; and

(b) shall if requested to do so by any person entitled to make a discharge in pursuance of the

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deemed consent,

by notice served on the owner and any occupier of the premises in question cancel the deemed consent and, subject to sub-paragraph (3) below, give its actual consent for such discharges as were authorised by the deemed consent.

(3) An actual consent given under sub-paragraph (2) above shall be so given either conditionally or subject to any conditions which may be attached to consents by virtue of section 121 of this Act.

(4) It is hereby declared that the provisions of Chapter III of Part IV of this Act with respect to the variation of conditions of a consent apply in relation to an actual consent under sub-paragraph (2) above as they apply in relation to any other actual consent under Chapter III of Part IV of this Act.

(5) A notice signifying an actual consent under sub-paragraph (2) above shall indicate that a right of appeal is conferred under the following paragraph in respect of the notice.

Appeals in respect of consents under paragraph 2

3

(1) A person on whom notice is served in pursuance of paragraph 2(2) above may, in accordance with regulations made by the Secretary of State, appeal to [the Authority].

(2) Section 137 of this Act shall apply, with the necessary modifications, in relation to appeals under this paragraph as it applies in relation to appeals under section 122 of this Act.

(3) On an appeal under this paragraph [the Authority] may give the sewerage undertaker in question any such direction as he thinks fit with respect to the notice and it shall be the duty of the undertaker to comply with the direction.

Determinations of disputes as to transitional matters

4

(1) Any dispute in so far as it—

(a) arises after the commencement of this Act and relates to a deemed consent in respect of discharges previously authorised under section 4 of the Public Health (Drainage of Trade Premises) Act 1937; and

(b) is a dispute as to the nature or composition of any trade effluent discharged from any trade premises into a sewer during any period, as to the quantity of trade effluent so discharged on any one day during any period or as to the rate of trade effluent so discharged during any period,

shall, unless the parties otherwise agree, be referred to [the Authority] for determination.

(2) On a reference under this paragraph [the Authority] may make such order in the matter as [it] thinks just.

(3) An order on a reference under this paragraph shall be final; but section 137 of this Act shall apply, with the necessary modifications, in relation to references under this paragraph as it applies in relation to appeals under section 122 of this Act.

Regulations as to residue of agreements

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5

The Secretary of State may by regulations make provisions in relation to the provisions of any agreement to which subsection (1) of section 43 of the Control of Pollution Act 1974 applied and which apart from that section would be in force after the commencement of this Act—

(a) for determining, by arbitration or otherwise, whether any such agreement continues to have effect as relating to a matter other than the discharge of trade effluent into a sewerage undertaker's sewer;

(b) for determining, by arbitration or otherwise, what modifications (if any) are appropriate in consequence of any prescribed provision of section 43 of that Act or any provision of this Schedule re-enacting any such provision; and

(c) in a case in which the conditions on which any discharges authorised by such an agreement included, immediately before the coming into force of section 43 of that Act, a condition as to charges in respect of the discharges and other matters—

(i) for determining, by arbitration or otherwise, the proportion of the charges attributable to the discharges; and

(ii) for limiting accordingly the conditions which are to be treated by virtue of section 43 of that Act as included in the deemed consent which has effect by virtue of this Schedule.

NOTES

Derivation

Para 1 derived from the Public Health (Drainage of Trade Premises) Act 1937, s 7(4), the Public Health Act 1961, s 63(8), the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, para 1; paras 2, 3 derived from the Control of Pollution Act 1974, s 43(2)–(5), the Water Act 1989, Sch 8, para 5(1); para 4 derived from the Public Health (Drainage of Trade Premises) Act 1937, s 4(5), the Control of Pollution Act 1974, Sch 3, para 9, the Water Act 1989, Sch 8, para 3(2); para 5 derived from the Control of Pollution Act 1974, ss 43(1)(b), 44(3), the Water Act 1989, Sch 8, para 5(2).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Paras 3, 4: words "the Authority" and "it" in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 9

MODIFICATION OF COMPENSATION PROVISIONS ETC IN RELATION TO THE CREATION OF NEW RIGHTS

Section 155

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Compensation enactments

1

Subject to the following provisions of this Schedule, the enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under section 155 of this Act of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

Adaptation of the Compulsory Purchase Act 1965

2

(1) The Compulsory Purchase Act 1965 (in the following provisions of this Schedule referred to as "the 1965 Act") shall have effect with the modifications necessary to make it apply to the compulsory acquisition under section 155 of this Act of a right by the creation of a new right as it applies to the compulsory acquisition under that section of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under section 155 of this Act of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

Section 7 of the 1965 Act

3

For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

[ISOB

"7

In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

[ISOE

Section 8 of the 1965 Act

4

For subsection (1) of section 8 of the 1965 Act (protection for vendor against severance of house, garden, etc) there shall be substituted the following subsections—

[ISOB

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"(1) No person shall be required to grant any right over part only—

(a) of any house, building or manufactory; or

(b) of a park or garden belonging to a house,

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the [Upper Tribunal determines] that—

(i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or

(ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;

and, if the [Upper Tribunal so determines], the Tribunal shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

(1A) In considering the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the Lands Tribunal shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase."

[ISOE

Effect of deed poll

5

The following provisions of the 1965 Act (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (refusal by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

Section 11 of the 1965 Act

6

Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service

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of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) shall be modified correspondingly.

Section 20 of the 1965 Act

7

Section 20 of the 1965 Act (protection for interests of tenants at will etc) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under section 155 of this Act of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

Section 22 of the 1965 Act

8

Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

NOTES

Derivation

This Schedule derived from the Water Act 1989, Sch 18.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Para 4: in the Compulsory Purchase Act 1965, s 8(1) (as set out) words "Upper Tribunal determines" in square brackets substituted by SI 2009/1307, art 5(1), (2), Sch 1, paras 220, 222(a)(i).

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

Para 4: in the Compulsory Purchase Act 1965, s 8(1) (as set out) words "Upper Tribunal so determines" in square brackets substituted by SI 2009/1307, art 5(1), (2), Sch 1, paras 220, 222(a)(ii).

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

SCHEDULE 10
PROCEDURE RELATING TO BYELAWS UNDER SECTION 157

Section 157

Confirmation of byelaws

1

(1) No byelaw made by a relevant undertaker under section 157 of this Act shall have effect until confirmed by the Secretary of State under this Schedule.

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(2) At least one month before it applies for the confirmation of any such byelaw, a relevant undertaker shall—

(a) cause a notice of its intention to make the application to be published in the London Gazette and in such other manner as it considers appropriate for the purpose of bringing the proposed byelaw to the attention of persons likely to be affected by it; and

(b) cause copies of the notice to be served on any persons carrying out functions under any enactment who appear to it to be concerned.

(3) For at least one month before an application is made by a relevant undertaker for the confirmation of any such byelaw, a copy of it shall be deposited at one or more of the offices of the relevant undertaker, including (if there is one) at an office in the area to which the byelaw would apply.

(4) A relevant undertaker shall provide reasonable facilities for the inspection free of charge of a byelaw deposited under sub-paragraph (3) above.

(5) Every person shall be entitled, on application to a relevant undertaker, to be furnished free of charge with a printed copy of a byelaw so deposited.

Confirmation with or without modifications

2

(1) The Secretary of State, with or without a local inquiry, may refuse to confirm any byelaw submitted to him by a relevant undertaker for confirmation under this Schedule, or may confirm the byelaw either without or, if the relevant undertaker consents, with modifications.

(2) The relevant undertaker which has so submitted a byelaw shall, if so directed by the Secretary of State, cause notice of any proposed modifications to be given in accordance with his directions.

Commencement of byelaw

3

(1) The Secretary of State may fix the date on which any byelaw confirmed under this Schedule is to come into force.

(2) If no date is so fixed, the byelaw shall come into force at the end of the period of one month beginning with the date of confirmation.

Availability of confirmed byelaws

4

(1) Every byelaw made by a relevant undertaker and confirmed under this Schedule shall be printed and deposited at one or more of the offices of the relevant undertaker, including (if there is one) at an office in the area to which the byelaw applies; and copies of the byelaw shall be available at those offices, at all reasonable times, for inspection by the public free of charge.

(2) Every person shall be entitled, on application to a relevant undertaker and on payment of such reasonable sum as the relevant undertaker may determine, to be furnished with a copy of any byelaw so deposited by that undertaker.

Revocation of byelaws

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5

Without prejudice to subsection (5) of section 157 of this Act and subject to paragraph 4(4) of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991, if it appears to the Secretary of State that the revocation of a byelaw under that section is necessary or expedient, he may, after—

(a) giving notice to the relevant undertaker which made the byelaw;

(b) considering any representations or objections made by that undertaker; and

(c) if required by that undertaker, holding a local inquiry, revoke that byelaw.

Proof of byelaws etc

6

The production of a printed copy of a byelaw purporting to be made by a relevant undertaker upon which is indorsed a certificate, purporting to be signed on its behalf, stating—

(a) that the byelaw was made by that undertaker;

(b) that the copy is a true copy of the byelaw;

(c) that on a specified date the byelaw was confirmed under this Schedule; and

(d) the date, if any, fixed under paragraph 3 above for the coming into operation of the byelaw,

shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

NOTES

Derivation

This Schedule derived from the Water Act 1989, Sch 24.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Schedule does not extend to Scotland: see s 223(3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 11
ORDERS CONFERRING COMPULSORY WORKS POWERS

Section 167

Applications for orders

1

(1) Where a water undertaker applies to the Secretary of State for a compulsory works order, it shall—

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(a) submit to the Secretary of State a draft of the order applied for;

(b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality;

(c) not later than the date on which that notice is first published—

(i) serve a copy of the notice on each of the persons specified in relation to the application in sub-paragraph (3) below; and

(ii) in the case of a draft order which would authorise the stopping-up or diversion of a footpath[, bridleway or restricted byway], cause such a copy, together with a plan showing the general effect of the draft order so far as it relates to the footpath[, bridleway or restricted byway], to be displayed in a prominent position at the ends of the part of the path or way to be stopped up or diverted;

and

(d) publish a notice in the London Gazette which—

(i) states that the draft order has been submitted to the Secretary of State;

(ii) names every local authority on whom a notice is required to be served under this paragraph;

(iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and

(iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.

(2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order by a water undertaker shall—

(a) state the general effect of the order applied for;

(b) in the case of an application made wholly or partly for the purpose of enabling any discharges of water to be made—

(i) contain particulars of the proposed discharges, stating the purposes of the discharges and specifying each place of discharge;

(ii) specify the places at which the water to be comprised in the proposed discharges is to be taken and the treatment (if any) which the draft order proposes to require the water, or any of it, to receive before being discharged under the order; and

(iii) state the effect which, in the opinion of the undertaker, the proposed discharges would have on the flow, level and quality of water in any inland waters or underground strata;

(c) specify a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of the first publication of the notice; and

(d) state that any person may, within that period, by notice to the Secretary of State object to the making of the order.

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(3) The persons mentioned in sub-paragraph (1)(c) above in relation to an application for a compulsory works order a draft of which has been submitted to the Secretary of State are—

(a) [the Environment Agency][, if the whole or any part of a relevant locality is in England];

[(aa) the NRBW, if the whole or any part of a relevant locality is in Wales;]

(b) every local authority whose area is or includes the whole or any part of a relevant locality;

(c) every water undertaker, not being the applicant, whose area is or includes the whole or any part of such a locality;

(d) every navigation authority, harbour authority and conservancy authority which would be affected by, or has functions in relation to any inland waters which would be affected by, any provision proposed to be made by the order;

[(e) every person—

(i) who is an owner, lessee, tenant (whatever the tenancy period) or occupier of any land in relation to which compulsory powers would become exercisable if the order were made in the terms of the draft order; or

(ii) who the water undertaker thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and the compulsory powers become exercisable, so far as he is known to the water undertaker after making diligent inquiry;]

(f) every person who has given notice to the water undertaker requiring it to notify him of applications for compulsory works orders and has paid such reasonable charge as the undertaker may have required him to pay for being notified by virtue of this paragraph;

(g) such other persons as may be prescribed.

(4) In this paragraph "relevant locality", in relation to an application for an order a draft of which is submitted to the Secretary of State by a water undertaker, means-—

(a) any locality which would be affected by any provision proposed to be made by the order for the purpose of enabling any engineering or building operations to be carried out; and

(b) where provision is proposed to be made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the proposed discharges is situated or in which there appears to that undertaker to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the proposed discharges.

Supply of copies of draft orders

2

A water undertaker applying for a compulsory works order shall, at the request of any person and on payment by that person of such charge (if any) as the undertaker may reasonably require, furnish that person with a copy of the draft order submitted to the Secretary of State under paragraph 1 above and of any relevant map or plan.

Powers on an application

3

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(1) On an application for a compulsory works order, the Secretary of State may make the order either in the terms of the draft order submitted to him or, subject to sub-paragraphs (2) and (3) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.

(2) The Secretary of State shall not make such a modification of a draft order submitted to him by any water undertaker as he considers is likely adversely to affect any persons unless he is satisfied that the undertaker has given and published such additional notices, in such manner, as the Secretary of State may have required.

(3) The Secretary of State shall not, unless all interested parties consent, make a compulsory works order so as to confer in relation to any land any powers of compulsory acquisition which would not have been conferred in relation to that land if the order were made in the terms of the draft order submitted to him under paragraph 1 above.

(4) Where, on an application by a water undertaker for a compulsory works order, the Secretary of State refuses to make an order, the undertaker shall, as soon as practicable after the refusal, notify the refusal to every person on whom it was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application.

(5) The duty of a water undertaker under sub-paragraph (4) above shall be enforceable under section 18 of this Act by the Secretary of State.

Consideration of objections etc.

4

(1) If, where an application for a compulsory works order has been made by a water undertaker, any notice of an objection to it is received, before the end of the relevant period, by the Secretary of State from—

(a) any person on whom a notice under paragraph 1 or 3 above is required to be served; or

(b) from any other person appearing to the Secretary of State to be affected by the order as submitted to him or as proposed to be modified under paragraph 3 above,

then, unless the objection is withdrawn, the Secretary of State shall, before making the order, either cause a local inquiry to be held or afford to the objector and to the undertaker an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(2) Where any objection received by the Secretary of State as mentioned in sub-paragraph (1) above relates to any powers of compulsory acquisition, the Secretary of State may require the objector to state in writing the grounds of his objection; and if the Secretary of State is satisfied that the objection relates exclusively to matters that can be dealt with in the assessment of compensation, he may disregard the objection for the purposes of that sub-paragraph.

(3) In this paragraph “the relevant period”, in relation to an application for any order, means the period ending with whichever is the later of—

(a) the end of the period of twenty-eight days beginning with the date of the first publication of the notice published with respect to the application for the purposes of paragraph 1(1)(b) above; and

(b) the end of the period of twenty-five days beginning with the date of the publication in the London Gazette of the notice published for the purposes of the application by virtue of paragraph 1(1)(d) above,

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together, in the case of an application for an order modifications to which have been proposed by the Secretary of State, with any further periods specified with respect to the modifications in notices under paragraph 3(2) above.

Notice after making of order

5

(1) As soon as practicable after a compulsory works order has been made, the undertaker on whose application it is made shall—

(a) publish a notice of the making of the order, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality; and

(b) not later than the date on which that notice is first published—

(i) serve a copy of the notice on every person on whom that undertaker was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application for the order; and

(ii) in the case of an order authorising the stopping-up or diversion of a footpath[, bridleway or restricted byway], cause such a copy, together with a plan showing the general effect of the order so far as it relates to the footpath[, bridleway or restricted byway], to be displayed in a prominent position at the ends of the appropriate part of the path or way.

(2) The notice required by virtue of sub-paragraph (1)(a) above to be published with respect to a compulsory works order shall—

(a) state the general effect of the order;

(b) in the case of an order made wholly or partly for the purpose of enabling any discharges of water to be made—

(i) contain particulars of the discharges, stating the purposes of the discharges and specifying each place of discharge;

(ii) specify the places at which the water to be comprised in the discharges is to be taken and the treatment (if any) which the order requires the water, or any of it, to receive before being discharged under the order; and

(iii) state the effect which, in the opinion of the applicant undertaker, the discharges would have on the flow, level and quality of water in any inland waters or underground strata;

and

(c) specify a place where a copy of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times.

(3) Where a compulsory works order has been made, the undertaker on whose application it was made shall, at the request of any person and on payment by that person of such charge (if any) as that undertaker may reasonably require, furnish that person with a copy of the order and of any relevant map or plan.

(4) The duties of a water undertaker under this paragraph shall be enforceable under section 18 of this Act by the Secretary of State.

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(5) In this paragraph "relevant locality", in relation to any compulsory works order, means—

(a) any locality which is affected by any provision made by the order for the purpose of enabling any engineering or building operations to be carried out; and

(b) where provision is made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the discharges is situated or in which there appears to the undertaker which applied for the order to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the discharges.

Compulsory acquisition provisions

6

(1) Without prejudice to the provisions of Schedule 14 to this Act—

(a) Part I of the Compulsory Purchase Act 1965;

(b) section 4 and Part III of, and Schedule 3 to, the Acquisition of Land Act 1981; and

(c) the enactments for the time being in force with respect to compensation for the compulsory purchase of land,

shall apply in relation to so much of a compulsory works order as confers powers of compulsory acquisition as they apply in relation to a compulsory purchase order made by virtue of section 155 of this Act and, accordingly, shall so apply, where the case so requires, with the modifications made by Schedule 9 to this Act.

(2) Subject to the provisions of sub-paragraph (6) below, if any person aggrieved by a compulsory works order containing powers of compulsory acquisition, or by a certificate given under the special land provisions in connection with such an order, desires—

(a) to question the validity of the order, or of any provision of the order, on the grounds that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred, or that any of the relevant requirements have not been complied with in relation to the order; or

(b) to question the validity of the certificate on the grounds that any of the relevant requirements have not been complied with in relation to the certificate,

he may make an application for the purpose to the High Court at any time before the end of the period of six weeks beginning with the date on which notice of the making of the order is first published in accordance with paragraph 5 above or, as the case may be, notice of the giving of the certificate is first published in accordance with the special land provisions.

(3) On any application under sub-paragraph (2) above with respect to any order or certificate, the High Court—

(a) may by interim order suspend the operation of the order, or any provision of the order, or of the certificate (either generally or in so far as it affects any property of the applicant to the High Court) until the final determination of the proceedings; and

(b) if satisfied—

(i) that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred; or

(ii) that the interests of that applicant have been substantially prejudiced by

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a failure to comply with any of the relevant requirements in relation to the order or the certificate,

may quash the order, or any provision of the order, or the certificate (either generally or in so far as it affects any property of that applicant).

(4) Except as provided by sub-paragraph (2) above, the validity of any such order or certificate as is mentioned in that sub-paragraph shall not, either before or after the order or certificate has been made or given, be questioned in any legal proceedings whatsoever.

(5) Subject to any order of the High Court under sub-paragraph (3) above, any such order or certificate as is mentioned in sub-paragraph (2) above shall become operative (except, in the case of an order, where it is subject by virtue of the special land provisions to special parliamentary procedure) on the date on which notice of the making or giving of the order or certificate is published as mentioned in the said sub-paragraph (2).

(6) Where an order such as is mentioned in sub-paragraph (2) above is subject to special parliamentary procedure, sub-paragraphs (2) to (4) of this paragraph—

(a) shall not apply to the order if it is confirmed by Act of Parliament under section [4 or] 6 of the Statutory Orders (Special Procedure) Act 1945; and

(b) in any other case, shall have effect as if the reference in sub-paragraph (2) of this paragraph to the date on which notice of the making of the order is first published in accordance with paragraph 5 above were a reference to the date on which the order becomes operative under the said Act of 1945.

(7) In this paragraph—

"the special land provisions" means the provisions, as applied by virtue of sub-paragraph (1) above, of Part III of the Acquisition of Land Act 1981 or, as the case may require, of Part II of Schedule 3 to that Act; and

"the relevant requirements", in relation to an order or certificate, means the requirements of this Schedule and such requirements of the special land provisions or of any other enactment as are applicable to that order or certificate by virtue of this paragraph.

Compensation in certain cases of compulsory acquisition

7

Where—

(a) in connection with any engineering or building operations to which a compulsory works order relates, a licence under Chapter II of Part II of the Water Resources Act 1991 is granted, or is deemed to be granted, to the water undertaker in question; and

(b) that licence is a licence to abstract water or to obstruct or impede the flow of any inland waters,

no compensation shall be payable by virtue of sub-paragraph (1) of paragraph 6 above in respect of any land or interest injuriously affected by the carrying out of those operations, in so far as that land or interest is injuriously affected by the abstraction of water, or the obstruction or impeding of the flow, in accordance with the provisions of the licence.

Compensation in respect of powers other than acquisition powers

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8

(1) If the value of any interest in any relevant land is depreciated by the coming into force of so much of any compulsory works order as—

(a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(b) grants authority for the carrying out of the operations,

the person entitled to that interest shall be entitled to compensation from the applicant for the order of an amount equal to the amount of the depreciation.

(2) Where the person entitled to an interest in any relevant land sustains loss or damage which—

(a) is attributable to so much of any compulsory works order as—

(i) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(ii) grants authority for the carrying out of the operations;

(b) does not consist in depreciation of the value of that interest; and

(c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 155 of this Act in pursuance of a notice to treat served on the date on which the order comes into force,

he shall be entitled to compensation from the applicant for the order in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.

(3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to so much of any compulsory works order as—

(a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(b) grants authority for the carrying out of the operations,

the applicant for the order shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.

(4) A person who sustains any loss or damage which is attributable to any discharge of water made by a water undertaker in pursuance of a compulsory works order shall be entitled to recover compensation from the undertaker in respect of the loss or damage.

(5) For the purposes of sub-paragraph (4) above any extra expenditure—

(a) which it becomes reasonably necessary for any water undertaker or public authority (other than the undertaker making the discharge) to incur for the purpose of properly carrying out any statutory functions; and

(b) which is attributable to any such discharge of water as is mentioned in that sub-paragraph,

shall be deemed to be a loss sustained by the undertaker or public authority and to be so attributable.

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(6) Any question of disputed compensation under this paragraph, shall be referred to and determined by the [Upper Tribunal]; and in relation to the determination of any such compensation the provisions of [section] 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.

(7) For the purpose of assessing any compensation under this paragraph, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(8) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (7) above is subject to a mortgage—

(a) the compensation shall be assessed as if the interest were not subject to the mortgage;

(b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;

(c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and

(d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

(9) In this paragraph "relevant land", in relation to a compulsory works order, means any land which is not land in relation to which powers of compulsory acquisition are conferred by the order but is—

(a) land where any operations for which authority is granted by the order are to be carried out;

(b) land in relation to which compulsory powers are conferred by the order; or

(c) land held with any land falling within paragraph (a) or (b) above.

Protection of public undertakings

9

The provisions of section 186 of this Act and of Part I of Schedule 13 to this Act shall apply, as they apply in relation to the carrying out of works in exercise of powers under this Act, in relation to the carrying out of works by virtue of an authority granted by so much of any compulsory works order as makes provision other than provision conferring powers of compulsory acquisition.

Interpretation

10

In this Schedule—

"bridleway" and "footpath" have the same meanings as in the Highways Act 1980;

"compulsory works order" means an order under section 167 of this Act;

"powers of compulsory acquisition" means any such powers as are mentioned in subsection (4)(a) of section 167 of this Act;

["restricted byway" has the same meaning as in Part 2 of the Countryside and Rights of Way Act

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2000;]

. . ..

NOTES

Derivation

This Schedule derived from the Water Act 1989, Sch 20.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Para 1: in sub-para (1)(c)(ii) words ", bridleway or restricted byway" in square brackets in both places they occur substituted by SI 2006/1177, reg 2, Schedule, Pt I.

Date in force (in relation to England): 2 May 2006 (being the date on which the Countryside and Rights of Way Act 2000, ss 47–50 came into force in relation to England): see SI 2006/1177, reg 1(2) and SI 2006/1172, art 2(a)–(d).

Date in force (in relation to Wales): 11 May 2006 (being the date on which the Countryside and Rights of Way Act 2000, ss 47–50 came into force in relation to Wales): see SI 2006/1177, reg 1(4) and SI 2006/1279, art 2(a)–(d).

Para 1: in sub-para (3)(a) words "the Environment Agency" in square brackets substituted by the Environment Act 1995, s 120, Sch 22, para 126.

Para 1: in sub-para (3)(a) words ", if the whole or any part of a relevant locality is in England" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 262(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Para 1: sub-para (3)(aa) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 262(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Para 1: sub-para (3)(e) substituted by SI 2007/1519, art 2, Schedule, para 8(a).

Date in force: 24 May 2007 (except in relation to any order of which notice was served before that date): see SI 2007/1519, art 1(1), (3).

Para 5: in sub-para (1)(b)(ii) words ", bridleway or restricted byway" in square brackets in both places they occur substituted by SI 2006/1177, reg 2, Schedule, Pt I.

Date in force (in relation to England): 2 May 2006 (being the date on which the Countryside and Rights of Way Act 2000, ss 47–50 came into force in relation to England): see SI 2006/1177, reg 1(2) and SI 2006/1172, art 2(a)–(d).

Date in force (in relation to Wales): 11 May 2006 (being the date on which the Countryside and Rights of Way Act 2000, ss 47–50 came into force in relation to Wales): see SI 2006/1177, reg 1(4) and SI 2006/1279, art 2(a)–(d).

Para 6: in sub-para (6)(a) words "4 or" in square brackets inserted by the Growth and Infrastructure Act 2013, s 25(9).

Date in force: 25 June 2013: see SI 2013/1488, art 3(e); for transitional and saving provisions see art 8(3) thereof.

Para 8: in sub-para (6) words "Upper Tribunal" in square brackets substituted by SI 2009/1307, art 5(1), (2), Sch 1, paras 220, 223(a).

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

Para 8: in sub-para (6) word "section" in square brackets substituted by SI 2009/1307, art 5(1), (2), Sch 1, paras 220, 223(b).

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

Para 10: definition "restricted byway" inserted by SI 2006/1177, reg 2, Schedule, Pt I.

Date in force (in relation to England): 2 May 2006 (being the date on which the Countryside

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and Rights of Way Act 2000, ss 47–50 came into force in relation to England): see SI 2006/1177, reg 1(2) and SI 2006/1172, art 2(a)–(d).
Date in force (in relation to Wales): 11 May 2006 (being the date on which the Countryside and Rights of Way Act 2000, ss 47–50 came into force in relation to Wales): see SI 2006/1177, reg 1(4) and SI 2006/1279, art 2(a)–(d).

Para 10: words omitted epealed by SI 2007/1519, art 2, Schedule, para 8(b).
Date in force: 24 May 2007 (except in relation to any order of which notice was served before that date): see SI 2007/1519, art 1(1), (3).

Modification

Modification: para 1(3) modified, in relation to a National Park authority in Wales, by the National Park Authorities (Wales) Order 1995, SI 1995/2803, art 18, Sch 5, para 2B.
Modification: para 1(3)(b) modified, in relation to a National Park authority in England, by the National Park Authorities (England) Order 1996, SI 1996/1243, art 18, Sch 5, para 6(1).
Modification: para 1(3)(b) modified, in relation to the New Forest National Park Authority, by the New Forest National Park Authority (Establishment) Order 2005, SI 2005/421, art 16, Sch 3, Pt 2, para 5(1).
Para 1(3)(b) modified by the National Park Authorities (England) Order 2015, SI 2015/770, art 11, Sch 3, Pt 1, para 5(1).

Transfer of Functions

Transfer of functions to the National Assembly for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 provides that, subject to art 2(b) to (f), functions of a Minister of the Crown under this Schedule above shall be transferred to the National Assembly for Wales as follows: (a) functions so far as relating to matters concerning the construction or enlargement of reservoirs are transferred to the Assembly in relation to Wales; (b) functions so far as relating to matters other than the construction or enlargement of reservoirs are transferred to the Assembly in relation to such parts of Wales as are outside the catchment areas of the rivers Dee, Wye and Severn; (c) functions so far as relating to matters other than the construction or enlargement of reservoirs shall, in relation to such parts of Wales as are within the catchment areas of the rivers Dee, Wye and Severn, be exercisable by the Assembly concurrently with the Secretary of State.

Subordinate Legislation

Water (Compulsory Works Powers) (Notice) Regulations 1999, SI 1999/221 (made under para 1(3)(g)).

SCHEDULE 12
COMPENSATION ETC IN RESPECT OF PIPE-LAYING AND OTHER WORKS POWERS

Section 180

Compensation in respect of street works powers

1

(1) This paragraph applies, in relation to a relevant undertaker, to the powers conferred on it in relation to streets by sections 158, 161 and 162 of this Act.

(2) It shall be the duty of every relevant undertaker—

(a) to do as little damage as possible in the exercise of the powers to which this paragraph applies; and

(b) to pay compensation for any loss caused or damage done in the exercise of those powers.

(3) Any dispute as to whether compensation should be paid under sub-paragraph (2) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed

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by agreement between the parties to the dispute or, in default of agreement, by [the Authority].

(4) Until the coming into force of Part III of the New Roads and Street Works Act 1991, a payment of compensation under this paragraph shall be treated for the purposes of section 32 of the Public Utilities Street Works Act 1950 (provisions against duplication of compensation) as made under an enactment passed before that Act of 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this paragraph).

Compensation in respect of pipe-laying works in private land

2

(1) If the value of any interest in any relevant land is depreciated by virtue of the exercise, by any relevant undertaker, of any power to carry out pipe-laying works on private land, the person entitled to that interest shall be entitled to compensation from the undertaker of an amount equal to the amount of the depreciation.

(2) Where the person entitled to an interest in any relevant land sustains loss or damage which-—

(a) is attributable to the exercise by any relevant undertaker of any power to carry out pipe-laying works on private land;

(b) does not consist in depreciation of the value of that interest; and

(c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 155 of this Act,

he shall be entitled to compensation from the undertaker in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.

(3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to the exercise by any relevant undertaker, of any power to carry out pipe-laying works on private land, the undertaker shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.

(4) The Secretary of State may by regulations make provision requiring a relevant undertaker, where it is proposing or has begun, in a prescribed case, to exercise any power to carry out pipe-laying works on private land, to make advance payments on account of compensation that will become payable in respect of the exercise of that power.

(5) In this paragraph “relevant land”, in relation to any exercise of a power to carry out pipe-laying works on private land, means the land where the power is exercised or land held with that land.

(6) In this paragraph the references to a power to carry out pipe-laying works on private land are references to any of the powers conferred by virtue of sections 159, 161(2) and 163 of this Act.

Assessment of compensation under paragraph 2

3

(1) Any question of disputed compensation under paragraph 2 above shall be referred to and determined by the [Upper Tribunal]; and in relation to the determination of any such compensation the provisions of [section] 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.

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(2) For the purpose of assessing any compensation under paragraph 2 above, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (2) above is subject to a mortgage—

(a) the compensation shall be assessed as if the interest were not subject to the mortgage;

(b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;

(c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and

(d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

(4) Where, apart from this sub-paragraph, any person entitled to an interest in any land would be entitled under paragraph 2 above to an amount of compensation in respect of any works, there shall be deducted from that amount an amount equal to the amount by which the carrying out of the works has enhanced the value of any other land which—

(a) is contiguous or adjacent to that land; and

(b) is land to an interest in which that person is entitled in the same capacity.

Compensation in respect of sewerage works etc

4

(1) Subject to the following provisions of this paragraph, a sewerage undertaker shall make full compensation to any person who has sustained damage by reason of the exercise by the undertaker, in relation to a matter as to which that person has not himself been in default, of any of its powers under the relevant sewerage provisions.

(2) Subject to sub-paragraph (3) below, any dispute arising under this paragraph as to the fact of damage, or as to the amount of compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by [the Authority].

(3) If the compensation claimed under this paragraph in any case does not exceed [£5,000], all questions as to the fact of damage, liability to pay compensation and the amount of compensation may, [be referred to [the Authority] for determination under section 30A of this Act by either party].

(4) . . .

(5) No person shall be entitled by virtue of this paragraph to claim compensation on the ground that a sewerage undertaker has, in the exercise of its powers under the relevant sewerage provisions, declared any sewer[, lateral drain] or sewage disposal works, whether belonging to that person or not, to be vested in the undertaker.

Compensation in respect of metering works

5

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(1) Without prejudice to section 148 of this Act or to paragraph 11 of Schedule 6 to this Act or paragraph 1 above, where a person authorised by any relevant undertaker carries out any works by virtue of section 162 of this Act on any premises, the undertaker shall make good, or pay compensation for, any damage caused by that person or by any person accompanying him by or in connection with the carrying out of the works.

(2) Any dispute between a relevant undertaker and any other person (including another such undertaker)—

(a) as to whether the undertaker should pay any compensation under this paragraph; or

(b) as to the amount of any such compensation,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the undertaker and that person or, in default of agreement, by [the Authority].

Compensation in respect of discharges for works purposes

6

(1) It shall be the duty of every water undertaker—

(a) to cause as little loss and damage as possible in the exercise of the powers conferred on it by section 165 of this Act; and

(b) to pay compensation for any loss caused or damage done in the exercise of those powers.

(2) For the purposes of subsection (1) above any extra expenditure—

(a) which it becomes reasonably necessary for any other water undertaker or any sewerage undertaker or public authority to incur for the purpose of properly carrying out any statutory functions; and

(b) which is attributable to any discharge of water under section 165 of this Act,

shall be deemed to be a loss sustained by the undertaker or public authority and to have been caused in exercise of the powers conferred by that section.

(3) Any dispute as to whether compensation should be paid under subparagraph (1) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

NOTES

Derivation

Para 1 derived from the Water Act 1989, Sch 10, para 1(2), Sch 19, para 2(4)–(6); para 2(1)–(5) derived from the Water Act 1989, Sch 19, para 6(1)–(3), (8), (9); para 3 derived from the Water Act 1989, Sch 19, para 6(4)–(7); para 4(1)–(3), (5) derived from the Public Health Act 1936, s 278, the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, para 1; para 5(1) derived from the Water Act 1989, Sch 10, para 2(4); para 5(2) derived from the Public Health Act 1936, s 303, the Water Act 1989, Sch 10, para 5; para 6 derived from the Water Act 1989, Sch 19, para 8(2)–(4).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Schedule does not extend to Scotland: see s 223(3).

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Amendment

Paras 1, 4, 5: words “the Authority” in square brackets in each place they occur substituted by virtue of the Water Act 2003, s 36(2).

Date in force: 1 April 2006: see SI 2005/2714, art 4(c); for transitional provisions see art 5(1), Schedule, para 8 thereto.

Para 3: in sub-para (1) words “Upper Tribunal” in square brackets substituted by SI 2009/1307, art 5(1), (2), Sch 1, paras 220, 224(a).

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

Para 3: in sub-para (1) word “section” in square brackets substituted by SI 2009/1307, art 5(1), (2), Sch 1, paras 220, 224(b).

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

Para 4: in sub-para (3) reference to “£5,000” and words from “be referred to” to “by either party” in square brackets substituted by the Competition and Service (Utilities) Act 1992, s 56(6), Sch 1, para 31.

Para 4: sub-para (4) repealed by the Competition and Service (Utilities) Act 1992, s 56(7), Sch 2.

Para 4: in sub-para (5) words “, lateral drain” in square brackets inserted by the Water Act 2003, s 97(1), (10).

Date in force: 28 May 2004: see SI 2004/641, art 4(b); for transitional provisions see art 6, Sch 3, para 7 thereto.

See Further

See further, in relation to interest payable on any award of compensation: the Planning and Compensation Act 1991, s 80, Sch 18, Part I.

See further, in relation to the application of this Schedule, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 13
PROTECTIVE PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS

Section 183

Part I
Provisions Applying Generally

General provisions protecting undertakings

1

(1) Nothing in this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—

(a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or

(b) with the use of any such works or property,

as to affect injuriously those works or that property or the carrying on of that undertaking.

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(2) Without prejudice to the construction of sub-paragraph (1) above for the purposes of its application in relation to the other provisions of this Act, that sub-paragraph shall have effect in its application in relation to the relevant sewerage provisions as if any use of, injury to or interference with any sluices, floodgates, sewers, groynes, sea defences or other works which are vested in or under the control of [the Environment Agency] [or the NRBW] or an internal drainage board were such an interference with works or property vested in or under the control of [the Environment Agency] [or the NRBW] or that board as to affect injuriously the works or property or the carrying on of the undertaking of [the Environment Agency] [or the NRBW] or of that board.

(3) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.

(4) Subject to the following provisions of this Schedule, any dispute—

(a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1) above;

(b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or

(c) as to whether any condition subject to which any such consent has been given was reasonable,

shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(5) The following are the undertakings protected by this paragraph, that is to say—

(a) the undertakings of [the Environment Agency], [the NRBW,] the Civil Aviation Authority, [the Coal Authority] and [a universal service provider (so far as it is the provider's undertaking in relation to the provision of a universal postal service][)];

(b) the undertaking of any relevant undertaker;

[(c) any undertaking consisting in the provision of an electronic communications network;]

(d) any airport to which Part V of the Airports Act 1986 applies;

(e) the undertaking of any public gas supplier within the meaning of Part I of the Gas Act 1986;

(f) the undertaking of any person authorised by a licence under Part I of the Electricity Act 1989 to generate, [supply or participate in the transmission of] electricity;

(g) the undertaking of any navigation, harbour or conservancy authority or of any internal drainage board;

(h) the undertaking of any railway undertakers;

(i) any public utility undertaking carried on by a local authority under any Act or under any order having the force of an Act;

[(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994];

[(k) the undertaking of a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services) to the extent that it is the person's undertaking as licence holder].

[(5A) In sub-paragraph (5)(a) above "universal service provider" has the same meaning as in [Part 3 of the Postal Services Act 2011]; and the reference to the provision of a universal postal service shall be

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construed in accordance with [that Part].]

(6) For the purposes of this paragraph any reference in this paragraph, in relation to any such airport as is mentioned in sub-paragraph (5)(d) above, to the persons carrying on the undertaking is a reference to the airport operator.

Protection for statutory powers and jurisdiction

2

Nothing in any provision of this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1 above.

Special protection for certain undertakings in respect of street works

3

(1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under the street works provisions to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)—

(a) is under the control or management of, or is maintainable by, railway undertakers or a navigation authority; or

(b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) above shall not apply to any exercise of the powers conferred by the street works provisions for the carrying out of emergency works, within the meaning of Part III of the New Roads and Street Works Act 1991.

(3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) Any dispute—

(a) as to whether a consent for the purposes of sub-paragraph (1) above should be given or withheld; or

(b) as to whether the conditions to which any such consent is made subject are reasonable,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(5) If any relevant undertaker contravenes, without reasonable excuse, the requirements of sub-paragraph (1) above, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(6) The restrictions contained in paragraphs (1) to (5) of section 32 of the Tramways Act 1870 (protection of tramways) shall apply in relation to any exercise of a power conferred by the street works

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provisions—

(a) as they apply in relation to the powers mentioned in that section; and

(b) as if references in that section to a tramway included references to a trolley vehicle system.

(7) In this paragraph "the street works provisions" means so much of sections 158, 161 and 162 of this Act as relates to powers exercisable in relation to streets.

(8) Until the coming into force of section 52 of the New Roads and Street Works Act 1991 sub-paragraph (2) above shall have effect as if the reference to Part III of that Act were a reference to the Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

Protection for telecommunication systems

4

Paragraph 23 of Schedule 2 to the Telecommunications Act 1984 (which provides a procedure for certain cases where works involve the alteration of [electronic communications apparatus]) shall apply to every relevant undertaker for the purposes of any works carried out by that undertaker in exercise of any of the powers conferred by any enactment (including, in the case of a statutory water company, section 1 of the Statutory Water Companies Act 1991).

NOTES

Derivation

Paras 1(1), (3), (4), 4 derived from the Water Act 1989, s 160(1), (6), (7), (8); para 1(2) derived from the Public Health Act 1936, s 334, the Water Act 1973, s 14(2), the Water Act 1989, Sch 8, para 1; para 1(5), (6) derived from the Water Act 1989, s 160(3), the Electricity Act 1989, s 112(1), Sch 16, para 37; para 2 derived from the Water Act 1989, s 160(2); para 3(1)–(5) derived from the Water Act 1989, Sch 19, para 3(1)–(5), the New Roads and Street Works Act 1991, s 168(1), Sch 8, para 122(4); para 3(6) derived from the Water Act 1989, Sch 19, para 2(9).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Part does not extend to Scotland: see s 223(3).

Amendment

Para 1: in sub-para (2) words "the Environment Agency" in each place they occur substituted by the Environment Act 1995, s 120, Sch 22, para 127.

Para 1: in sub-para (2) words "or the NRBW" in square brackets in each place they occur inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 263(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Para 1: in sub-para (5)(a) words "the Environment Agency" substituted by the Environment Act 1995, s 120, Sch 22, para 127.

Para 1: in sub-para (5)(a) words "the NRBW," in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 223, 263(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7, Pts 1, 4 thereto.

Para 1: in sub-para (5)(a) words "the Coal Authority" in square brackets substituted by the Coal Industry Act 1994, s 67, Sch 9, para 42(a).

Para 1: in sub-para (5)(a) words from "a universal service" to "universal postal service)" in square brackets substituted by SI 2001/1149, art 3(1), Sch 1, para 88(1), (2).

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Date in force: 26 March 2001: see SI 2001/1149, art 1(2).

Para 1: sub-para (5)(c) substituted by the Communications Act 2003, s 406(1), Sch 17, para 111(1), (2).

Date in force (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by the Communications Act 2003, s 408(6)): 25 July 2003–29 December 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and the Communications Act 2003, ss 406(6), 408, Sch 18, para 2.

Date in force (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Para 1: in sub-para (5)(f) words "supply or participate in the transmission of" in square brackets substituted by the Energy Act 2004, s 143(1), Sch 19, para 17.

Date in force: 1 September 2004: see SI 2004/2184, art 2(2), Sch 2.

Para 1: sub-para (5)(j) inserted by the Coal Industry Act 1994, s 67, Sch 9, para 42(b).

Para 1: sub-para (5)(k) inserted by the Transport Act 2000, s 37, Sch 5, para 14.

Date in force: 1 April 2001: see SI 2001/869, art 2.

Para 1: sub-para (5A) inserted by SI 2001/1149, art 3(1), Sch 1, para 88(1), (3).

Date in force: 26 March 2001: see SI 2001/1149, art 1(2).

Para 1: in sub-para (5A) words "Part 3 of the Postal Services Act 2011" in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 3, para 137(a).

Date in force: 1 October 2011: see SI 2011/2329, art 3(1).

Para 1: in sub-para (5A) words "that Part" in square brackets substituted by the Postal Services Act 2011, s 91(1), (2), Sch 12, Pt 3, para 137(b).

Date in force: 1 October 2011: see SI 2011/2329, art 3(1).

Para 4: words "electronic communications apparatus" in square brackets substituted by the Communications Act 2003, s 406(1), Sch 17, para 111(1), (3).

Date in force (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by the Communications Act 2003, s 408(6)): 25 July 2003–29 December 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and the Communications Act 2003, ss 406(6), 408, Sch 18, para 2.

Date in force (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Modification

Public gas supplier: the Gas Act 1995, s 16(1), Sch 4, para 2(2)(m) provides that a reference to a public gas supplier shall have effect as a reference to a public gas transporter. See further, the note "Public gas transporter" below.

Public gas transporter: the Utilities Act 2000, s 76(7) provides that a reference to a public gas transporter shall have effect as a reference to a gas transporter.

See Further

See further, in relation to the application of this Part of this Schedule, with modifications, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(7).

Part II
Further Protective Provisions in Respect of Sewerage Powers

Protection for dock undertakers

5

(1) Subject to the provisions of this paragraph, nothing in the relevant sewerage provisions shall authorise a sewerage undertaker, without the consent of the dock undertakers concerned—

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(a) to interfere with any river, canal, dock, harbour, basin, lock or reservoir so as injuriously to affect navigation thereon or the use thereof or the access thereto, or to interfere with any towing path, so as to interrupt the traffic thereon;

(b) to interfere with any bridges crossing any river, canal, dock, harbour or basin;

(c) to carry out any works in, across or under any dock, harbour, basin, wharf, quay or lock, or any land which belongs to dock undertakers and is held or used by them for the purposes of their undertaking;

(d) to carry out any works which will interfere with the improvement of, or the access to, any river, canal, dock, harbour, basin, lock, reservoir, or towing path, or with any works appurtenant thereto or any land necessary for the enjoyment or improvement thereof.

(2) For the purposes of this paragraph dock undertakers shall be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if—

(a) it belongs to them and forms part of their undertaking; or

(b) they have statutory rights of navigating on or using it or of demanding tolls or dues in respect of navigation thereon or the use thereof.

(3) A consent under this paragraph shall not be unreasonably withheld.

(4) Any dispute as to whether or not consent under this paragraph is unreasonably withheld shall be referred, if either party so require, to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

(5) Upon an arbitration under this paragraph, the arbitrator shall determine—

(a) whether any works which the sewerage undertaker proposes to carry out are such works as under this paragraph the undertaker is not entitled to carry out without the consent of any dock undertakers;

(b) if they are such works, whether the injury, if any, to the undertakers will be of such a nature as to admit of being fully compensated by money; and

(c) if the works are of such a nature, the conditions subject to which the sewerage undertaker may carry out the works, including the amount of the compensation (if any) to be paid by the sewerage undertaker to the dock undertakers.

(6) The sewerage undertaker in question shall not proceed to carry out any proposed works if, on an arbitration under this paragraph, the arbitrator determines—

(a) that the proposed works are such works as the sewerage undertaker is not entitled to carry out without the consent of the dock undertakers; and

(b) that the works would cause injury to the dock undertakers of such a nature as not to admit of being fully compensated by money,

but, in any other case, the sewerage undertaker may carry out the works subject to compliance with such conditions, including the payment of such compensation, as the arbitrator may have determined.

(7) Nothing in this paragraph shall be construed as limiting the powers of a sewerage undertaker under this Act in respect of the opening and the breaking up of streets and bridges for the purpose of constructing, laying and maintaining sewers, drains and pipes.

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Protection for airports, railways etc

6

(1) Subject to the provisions of this paragraph, nothing in the relevant sewerage provisions shall authorise a sewerage undertaker, without the consent of the Civil Aviation Authority or, as the case may be, of the airport operator or railway undertakers concerned, to carry out any works along, across or under—

(a) any property of the Civil Aviation Authority;

(b) an airport to which Part V of the Airports Act 1986 applies; or

(c) any railway of any railway undertakers.

(2) Sub-paragraphs (3) to (7) of paragraph 5 above shall apply for the purposes of this paragraph as they apply for the purposes of sub-paragraph (1) of that paragraph but as if references to the dock undertakers were references, as the case may require, to the Civil Aviation Authority, to the relevant airport operator or to the railway undertakers.

Saving for Part I and other powers

7

The provisions of this Part of this Schedule are without prejudice to the provisions of Part I of this Schedule or to any power conferred on a sewerage undertaker otherwise than by the relevant sewerage provisions.

NOTES

Derivation

Paras 5, 6 derived from the Public Health Act 1936, s 333, the Water Act 1973, s 14(2), the Civil Aviation Act 1982, s 19(2), Sch 2, para 1(2), the Airports Act 1986, s 58, Sch 2, para 2, and the Water Act 1989, s 69, Sch 8, para 1.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Part does not extend to Scotland: see s 223(3).

See Further

See further, in relation to the disapplication of this Part of this Schedule, for the purposes of the regulation of specified infrastructure projects: the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, SI 2013/1582, reg 3(1), Sch 1, paras 1, 13(7)(c).

SCHEDULE 14
MINERAL RIGHTS

Section 188

Acquisition of mineral rights

1

(1) This paragraph applies in each of the following cases, that is to say—

(a) where a relevant undertaker acquires any land (whether compulsorily in exercise of any

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power conferred by or under this Act or otherwise); and

(b) where a relevant undertaker carries out any works in relation to any land for the purposes of, or in connection with, the carrying out of any of its functions.

(2) Subject to sub-paragraph (3) below, a relevant undertaker shall not by virtue only of its acquisition of the land or the carrying out of the works, become entitled to any mines or minerals lying under the land; and, accordingly, any such mines or minerals shall be deemed to be excepted from any instrument by virtue of which the land vests in the relevant undertaker unless express provision to the contrary is contained—

(a) where the land vests in the relevant undertaker by virtue of a conveyance, in the conveyance; or

(b) where the land is acquired by the relevant undertaker in pursuance of any power of compulsory acquisition conferred by or under this Act, in the order authorising the acquisition.

(3) A relevant undertaker shall be entitled to such parts of any mines or minerals that lie under the land as it may be necessary for it to dig, carry away or use in carrying out any works for the purposes of constructing, making, erecting or laying any part of its undertaking.

Notice required for the working of underlying mines

2

(1) If the owner of any mines or minerals underlying any part of a relevant undertaker's undertaking proposes to work them, he shall, not less than thirty days before the commencement of working, serve notice of his intention to do so on the relevant undertaker.

(2) On receipt of a notice under sub-paragraph (1) above the relevant undertaker may cause the mines or minerals to be inspected by a person designated by it for the purpose.

(3) Subject to sub-paragraph (5) and paragraph 3 below, if, where notice has been served under this paragraph, the relevant undertaker—

(a) considers that the working of the underlying mines or minerals is likely to damage any part of its undertaking;

(b) is willing to compensate the owner of the mines or minerals for the restriction imposed by virtue of this sub-paragraph; and

(c) serves notice to that effect on the owner of the mines or minerals before the end of the period of thirty days mentioned in sub-paragraph (1) above,

the owner shall not work the mines or minerals except to such extent as may be determined by the relevant undertaker, and the relevant undertaker shall so compensate the owner.

(4) Any dispute as to the amount of any compensation payable by virtue of sub-paragraph (3) above shall be referred to and determined by the [Upper Tribunal].

(5) If before the end of the period of thirty days mentioned in sub-paragraph (1) above, no notice has been served under sub-paragraph (3)(c) above by the relevant undertaker, the entitlement of the owner of the mines and minerals to work them shall be an entitlement to work them by proper methods and in the usual manner of working such mines or minerals in the district in question.

(6) If any damage to the undertaking of a relevant undertaker is caused by the working otherwise than as authorised by this paragraph of any mines or minerals underlying any part of its undertaking—

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(a) the owner of the mines or minerals shall, at his own expense, forthwith repair the damage; and

(b) the relevant undertaker may, without waiting for the owner to perform his duty, repair the damage and may recover the expenses reasonably incurred by it in doing so from the owner.

Mining communications

3

(1) If the working of any mines or minerals is prevented by reason of any of the preceding provisions of this Schedule, the owner of the mines or minerals may cut and make such communication works through the mines or minerals, or the strata in which they are situated, as are required for the ventilation, drainage and working of mines or minerals which are not underlying any part of the undertaking of the relevant undertaker in question.

(2) Communication works cut or made under this paragraph—

(a) shall not, in a case where—

(i) the part of the undertaking in question was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the relevant undertaker in pursuance of any powers of compulsory acquisition; and

(ii) the order authorising the works or acquisition designates dimensions or sections for the communication works,

exceed those dimensions or fail to conform to those sections; and

(b) in any other case, shall not be more than 2.44 metres high or more than 2.44 metres wide.

(3) Communication works cut or made under this paragraph shall not be cut or made on the land where the part of the undertaking is situated so as to cause damage to that part of the undertaking.

(4) Where works carried out under this paragraph by the owner of any mines or minerals cause loss or damage to the owner or occupier of land lying over the mines or minerals, the relevant undertaker shall pay full compensation to him for the loss or damage.

(5) Sub-paragraph (4) above shall not apply where the person sustaining the loss or damage is the owner of the mines.

(6) In this paragraph “communication works” means airways, headways, gateways or water levels.

Compensation relating to severance

4

(1) Where mines or minerals underlying any part of a relevant undertaker’s undertaking are situated so as, on two or more sides of that land, to extend beyond the land on which that part of the undertaking is situated, the relevant undertaker shall from time to time pay to the owner of the mines or minerals (in addition to any compensation under paragraph 2 above) any expenses and losses incurred by him in consequence of—

(a) the severance by the undertaking of the land lying over the mines;

(b) the interruption of continuous working of the mines in consequence of paragraph 2(3) above;

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(c) the mines being so worked in accordance with restrictions imposed by virtue of this Act or any order made under this Act,

and shall pay for any minerals not purchased by the relevant undertaker which cannot be got or won by reason of the part of the undertaking in question being situated where it is or by reason of the requirement to avoid damage to any part of the relevant undertaker's undertaking.

(2) Any dispute as to whether any sum should be paid under this paragraph or as to the amount payable shall be referred to the arbitration of a single arbitrator appointed by agreement between the relevant undertaker and the owner of the mines or minerals or, in default of agreement, by the Secretary of State.

Powers of entry

5

(1) Any person designated in writing for the purpose by a relevant undertaker may, for any purpose specified in sub-paragraph (2) below—

(a) enter on any land in which the mines or minerals are, or are thought to be, being worked, and which is in or near to the land where any part of that undertaker's undertaking is situated; and

(b) enter the mines and any works connected with the mines.

(2) The purposes mentioned in sub-paragraph (1) above are—

(a) carrying out any inspection under paragraph 2(2) above;

(b) ascertaining whether any mines or minerals have been worked so as to damage the undertaking of the relevant undertaker in question; and

(c) carrying out any works and taking any other steps which the relevant undertaker in question is authorised to carry out or take under paragraph 2(6) above.

(3) A person authorised to enter any premises under this paragraph may—

(a) make use of any equipment belonging to the owner of the mines or minerals in question; and

(b) use all necessary means for discovering the distance from any part of the undertaking of the relevant undertaker to the parts of the mines or the minerals which are, or are about to be, worked.

(4) Part II of Schedule 6 to this Act shall apply to the rights and other powers conferred by this paragraph.

No exemption for injury to mines and minerals

6

Nothing in any provision of this Act or of any order made under this Act shall be construed as exempting a relevant undertaker from any liability to which it would, apart from that provision, have been subject in respect of any damage to any mines or minerals underlying any part of its undertaking or in respect of any loss sustained in relation to any such mines or minerals by a person having an interest therein.

Interpretation

7

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(1) In this Schedule—

"conveyance" has the same meaning as in the Law of Property Act 1925;

"designated distance", in relation to any part of a relevant undertaker's undertaking, means, subject to sub-paragraph (6) below, thirty-seven metres;

"mines" means mines of coal, ironstone, slate or other minerals;

"owner", in relation to mines and minerals, includes a lessee or occupier; and

"underlying", in relation to any part of the undertaking of a relevant undertaker, means lying under, or within the designated distance from, that part of that undertaking.

(2) For the purposes of this Schedule the undertaking of a relevant undertaker shall be taken to consist of so much of any of the following as is for the time being vested in or held by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions, that is to say—

(a) any buildings, reservoirs, wells, boreholes or other structures; and

(b) any pipes or other underground works particulars of which fall or would fall to be incorporated in any records kept under section 198 or 199 of this Act.

(3) References in this Schedule to the working of any mines or minerals include references to the draining of mines and to the winning or getting of minerals.

(4) For the purposes of this Schedule land shall be treated as acquired by a relevant undertaker in pursuance of powers of compulsory acquisition if it—

(a) was so acquired by a water authority established under section 2 of the Water Act 1973 or any predecessor of such a water authority or by a predecessor of a statutory water company; and

(b) is now vested in that undertaker in accordance with a scheme under Schedule 2 to the Water Act 1989 or Schedule 2 to this Act or otherwise.

(5) In relation—

(a) to any land treated by virtue of sub-paragraph (4) above as acquired in pursuance of powers of compulsory acquisition; or

(b) to any land acquired by a statutory water company before 1st September 1989 in pursuance of any such powers,

references in this Schedule to the order authorising the acquisition include references to any local statutory provision which immediately before 1st September 1989 had effect in relation to that land for the purposes of any provisions corresponding to the provisions of this Schedule.

(6) For the purposes of this Schedule where—

(a) any part of a relevant undertaker's undertaking was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the relevant undertaker in pursuance of any powers of compulsory acquisition; and

(b) the order authorising the works or acquisition designates any distance for the purposes of any enactment relating to mines or minerals underlying that part of the undertaking,

then for the purposes of this Schedule that distance shall be the designated distance in relation to that

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part of the undertaking, instead of the distance specified in sub-paragraph (1) above.

NOTES

Derivation

This Schedule derived from the Water Act 1989, Sch 21.

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Schedule does not extend to Scotland: see s 223(3).

Amendment

Para 2: in sub-para (4) words “Upper Tribunal” in square brackets substituted by SI 2009/1307, art 5(1), (2), Sch 1, paras 220, 225.

Date in force: 1 June 2009: see SI 2009/1307, art 1; for transitional and savings provisions see art 5(6), Sch 5 thereto.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 15
DISCLOSURE OF INFORMATION

Section 206

Part I
Persons in respect of whose Functions Disclosure may be made

Any Minister of the Crown.

. . .

The [CMA].

[The Office of Communications.]

The Civil Aviation Authority.

[The Gas and Electricity Markets Authority.]

[The Office of Rail Regulation.]

[The National Association of Citizens Advice Bureaux.]

A local weights and measures authority in England and Wales.

[. . .]

NOTES

Derivation

This Part derived from the Water Act 1989, s 174(2).

Initial Commencement

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Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Part does not extend to Scotland: see s 223(3).

Amendment

Entry "The OFT." (omitted) repealed by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 94(a).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

In entry "The CMA." (previously "The Competition Commission") reference to "CMA" in square brackets substituted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 94(a).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

Entry "The Office of Communications." substituted, for entry "The Director General of Telecommunications." as originally enacted, by the Communications Act 2003, s 406(1), Sch 17, para 112(1), (2).

Date in force (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by the Communications Act 2003, s 408(6)): 25 July 2003–29 December 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and the Communications Act 2003, ss 406(6), 408, Sch 18, para 2.

Date in force (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Entry "The Gas and Electricity Markets Authority" substituted, for entries "The Director General of Gas Supply" and "The Director General of Electricity Supply" as originally enacted, by virtue of the Utilities Act 2000, s 3(2).

Date in force: 20 December 2000: see SI 2000/3343, art 2, Schedule.

Entry "The Office of Rail Regulation" substituted, for entry "The Rail Regulator" (as inserted by the Railways Act 1993, s 152, Sch 12, para 30(a)), by the Railways and Transport Safety Act 2003, s 16(5), Sch 2, Pt 2, para 19(l); for savings see s 16(5), Sch 3 thereto.

Date in force: 5 July 2004: see SI 2004/827, art 4(g).

Entry "The National Association of Citizens Advice Bureaux." inserted by SI 2014/631, art 3, Sch 1, Pt 1, para 6(a).

Date in force: 1 April 2014: see SI 2014/631, art 1(3); for transitional provisions see Sch 1, Pt 5 thereto.

Entry "The National Consumer Council." (omitted) inserted by the Consumers, Estate Agents and Redress Act 2007, s 63(1), Sch 7, para 10(a).

Date in force: 1 October 2008: see SI 2008/2550, art 2, Schedule.

Entry "The National Consumer Council." (omitted) repealed by SI 2014/631, art 3, Sch 1, Pt 1, para 6(b).

Date in force: 1 April 2014: see SI 2014/631, art 1(3); for transitional provisions see Sch 1, Pt 5 thereto.

Part II
Enactments etc in respect of which disclosure may be made

The Trade Descriptions Act 1968.

The Fair Trading Act 1973.

The Consumer Credit Act 1974.

. . .

. . .

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The Estate Agents Act 1979.

The Competition Act 1980.

The Telecommunications Act 1984.

The Airports Act 1986.

The Gas Act 1986.

The Consumer Protection Act 1987.

The Electricity Act 1989.

[The Railways Act 1993]

[The Competition Act 1998]

[Part I of the Transport Act 2000.]

[The Enterprise Act 2002.]

[The Communications Act 2003.]

[The Railways Act 2005.]

[The Consumers, Estate Agents and Redress Act 2007.]

. . .

[Any subordinate legislation made for the purpose of securing compliance with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.]

[Any subordinate legislation made for the purpose of securing compliance with Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.]

[Part 1 of the Civil Aviation Act 2012.]

[Parts 3 and 4 of the Enterprise and Regulatory Reform Act 2013.]

NOTES

Derivation

This Part derived from the Water Act 1989, s 174(3).

Initial Commencement

Specified date

Specified date: 1 December 1991: see s 223(2).

Extent

This Part does not extend to Scotland: see s 223(3).

Amendment

Entry relating to the Restrictive Trade Practices Act 1976 (omitted) repealed by the Competition Act 1998, ss 54(3), 74(3), Sch 10, para 13(10)(a), Sch 14, Pt I.

Date in force: 1 March 2000: see SI 2000/344, art 2, Schedule.

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Entry relating to the Resale Prices Act 1976 (omitted) repealed by the Competition Act 1998, ss 54(3), 74(3), Sch 10, para 13(10)(a), Sch 14, Pt I.

Date in force: 1 March 2000: see SI 2000/344, art 2, Schedule.

Entry relating to the Railways Act 1993 inserted by the Railways Act 1993, s 152, Sch 12, para 30(b).

Entry relating to the Competition Act 1998 inserted by the Competition Act 1998, s 54(3), Sch 10, para 13(10)(b).

Date in force: 11 January 1999: see SI 1998/3166, art 2, Schedule.

Entry relating to the Transport Act 2000 inserted by SI 2001/4050, art 2, Schedule, Pt IV, para 21.

Date in force: 21 December 2001: see SI 2001/4050, art 1.

Entry relating to the Enterprise Act 2002 inserted by the Enterprise Act 2002, s 278(1), Sch 25, para 25(1), (12)(b).

Date in force: 1 April 2003: see SI 2003/766, art 2, Schedule.

Entry relating to the Communications Act 2003 inserted by the Communications Act 2003, s 406(1), Sch 17, para 112(1), (3).

Date in force (for the purpose only of enabling the networks and services functions and the spectrum functions to be carried out by the Director General of Telecommunications and the Secretary of State respectively, during the transitional period (as provided for by the Communications Act 2003, s 408(6)): 25 July 2003–29 December 2003: see SI 2003/1900, arts 2(1), 3(1), Sch 1 and the Communications Act 2003, ss 406(6), 408, Sch 18, para 2.

Date in force (for the purpose of conferring the networks and services functions and the spectrum functions on OFCOM): 29 December 2003: by virtue of SI 2003/3142, art 3(2).

Entry relating to the Railways Act 2005 inserted by the Railways Act 2005, s 59(1), Sch 12, para 10.

Date in force: 8 June 2005: see SI 2005/1444, art 2(1), Sch 1.

Entry relating to the Consumers, Estate Agents and Redress Act 2007 inserted by the Consumers, Estate Agents and Redress Act 2007, s 63(1), Sch 7, para 10(b).

Date in force: 1 October 2008: see SI 2008/2550, art 2, Schedule.

Entry relating to any subordinate legislation made for the purpose of securing compliance with the Directive of the Council of the European Communities (No 84/450/EEC) (omitted) repealed by SI 2008/1277, reg 30(1), (3), Sch 2, Pt 1, para 49(a), Sch 4, Pt 1.

Date in force: 26 May 2008: see SI 2008/1277, reg 1.

Entry relating to any subordinate legislation made for the purpose of securing compliance with Directive 2005/29/EC inserted by SI 2008/1277, reg 30(1), Sch 2, Pt 1, para 49(b).

Date in force: 26 May 2008: see SI 2008/1277, reg 1.

Entry relating to any subordinate legislation made for the purpose of securing compliance with Directive 2006/114/EC inserted by SI 2008/1277, reg 30(1), Sch 2, Pt 1, para 49(b).

Date in force: 26 May 2008: see SI 2008/1277, reg 1.

Entry relating to Part 1 of the Civil Aviation Act 2012 inserted by the Civil Aviation Act 2012, s 76(4), Sch 9, para 6.

Date in force: 6 April 2013: see SI 2013/589, art 2(3)(c).

Entry “Parts 3 and 4 of the Enterprise and Regulatory Reform Act 2013.” inserted by SI 2014/892, art 2, Sch 1, Pt 2, paras 73, 94(b).

Date in force: 1 April 2014: see SI 2014/892, art 1(1); for transitional provisions see art 3, Sch 2 thereto.

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