



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART II

#### APPOINTMENT AND REGULATION OF UNDERTAKERS

### CHAPTER III

#### PROTECTION OF CUSTOMERS ETC.

#### *Provisions with respect to competition*

### **31 Functions of Director with respect to competition**

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the 1973 Act so far as relating to courses of conduct which are or may be detrimental to the interests of persons who are consumers in relation to—
  - (a) the supply of water by water undertakers; or
  - (b) the provision of sewerage services by sewerage undertakers;and this duty shall apply whether those interests are economic or interests in respect of health, safety or other matters.
- (2) The Director shall continue to be entitled, concurrently with the Director General of Fair Trading, to exercise—
  - (a) the functions of that Director under sections 44 and 45 of the 1973 Act; and
  - (b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the supply of water or the provision of sewerage services.
- (3) The Director shall continue to be entitled, concurrently with the Director General of Fair Trading, to exercise the functions of that Director under sections 2 to 10 and 16 of

---

*Status: This is the original version (as it was originally enacted).*

---

the 1980 Act so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection 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 the provisions of subsections (1) to (3) above, the references to the Director General of Fair Trading in—
- (a) Parts III and IV of the 1973 Act;
  - (b) sections 86, 88 and 133 of the 1973 Act; and
  - (c) sections 2 to 10, 16 and 19 of the 1980 Act,
- shall be construed as if they were or, as the case may require, as if they included references to the Director.
- (5) Before either Director first exercises in relation to any matter functions mentioned in paragraph (a) or in paragraph (b) of subsection (2) above or in subsection (3) above, he shall consult the other Director.
- (6) Neither Director shall exercise in relation to any matter any functions mentioned in paragraph (a) or in paragraph (b) of subsection (2) above or in subsection (3) above if any of the functions mentioned in that paragraph or, as the case may be, in subsection (3) above have already been exercised in relation to that matter by the other Director.
- (7) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) or (3) above, to give to the Commission—
- (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 Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;
- and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.
- (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 be taken to anything done under—
- (a) Part IV or section 86 or 88 of the 1973 Act; or
  - (b) sections 2 to 10 of the 1980 Act,
- by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.
- (9) Expressions used in the 1973 Act or the 1980 Act and in this section have the same meanings in this section as in that Act.

### **32 Duty to refer merger of water or sewerage undertakings**

- (1) Subject to the following provisions of this section and to section 33 below, it shall be the duty of the Secretary of State to make a merger reference to the Monopolies Commission if it appears to him that it is or may be the fact—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (2) The Secretary of State shall not make a merger reference under this section in respect of any actual or prospective merger of two or more water enterprises if it appears to him that the take over from which the merger has resulted or, as the case may be, would result was initiated before 9 a.m. on 11th January 1989.
- (3) For the purposes of subsection (2) above a merger of two or more enterprises results from a take over initiated before 9 a.m. on 11th January 1989 if—
- (a) the Secretary of State or the Director General of Fair Trading was given notice before that time on that date of the material facts about the proposed arrangements or transactions resulting in the merger; or
  - (b) the merger results exclusively from the acceptance of offers to acquire shares in a body corporate and those offers—
    - (i) were all made before that time on that date; or
    - (ii) in so far as they were not so made, consist in offers made, by the same person and in respect of the same shares, in substitution for offers made before that time on that date.

### **33 Exclusion of small mergers from duty to make merger reference**

- (1) The Secretary of State 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 him—
- (a) that the value of the assets taken over does not exceed or, as the case may be, would not exceed the amount for the time being specified in section 64(1)(b) of the 1973 Act (condition of merger reference relating to amount of assets taken over); or
  - (b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has assets the value of which does not exceed or, as the case may be, would not exceed that amount.
- (2) In relation to a merger of two or more water enterprises—
- (a) the value of the assets taken over shall, for the purposes of subsection (1) above, be determined in accordance with section 67 of the 1973 Act by reference only to assets employed in or appropriated to a water enterprise; and
  - (b) the value of the assets of a water enterprise belonging to the person making the take over shall be taken for those purposes to be the value of such assets employed in or appropriated to that enterprise as by virtue of the exceptions in paragraph (a) of subsection (2) of that section are disregarded in determining the value of the assets taken over;
- and paragraph (b) of that subsection shall apply for determining the value of the assets referred to in paragraph (b) above as it applies in relation to the assets taken over.
- (3) For the purposes of this section and of any determination in accordance with this section—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) the assets treated as employed in or appropriated to a water enterprise carried on by a company holding an appointment under Chapter I of this Part shall include all the assets for the time being of that company;
  - (b) every water enterprise any of whose assets fall to be disregarded as mentioned in subsection (2)(b) above shall be treated as belonging to the person making the take over;
  - (c) the enterprises mentioned in paragraph (b) above shall be treated as separate enterprises in so far as they are carried on by different companies holding appointments under Chapter I of this Part; and
  - (d) subsections (3) and (4) of section 67 of the 1973 Act (assets treated as appropriated to an enterprise and mergers over a period) shall apply as they apply for the purposes of, and of any determination in accordance with, subsection (2) of that section.
- (4) If the Secretary of State considers that it is appropriate—
- (a) for subsection (1) above to have effect with a reference in paragraph (a) to a different amount; or
  - (b) for the condition set out in that paragraph to be modified in any other respect, he may, in relation to mergers after the coming into force of the regulations, by regulations make such modifications of that paragraph and, for that purpose, of the other provisions of this section as may be prescribed.

### **34 References with respect to water enterprise mergers**

- (1) Subject to subsections (2) to (4) below, the 1973 Act shall have effect in relation to any reference under section 32 above as if—
- (a) any such merger of two or more water enterprises as is required to be the subject of such a reference were a merger situation qualifying for investigation; and
  - (b) a reference under that section were made under section 64 of that Act or, as the case may be, under section 75 of that Act (references in anticipation of a merger).
- (2) Nothing in subsection (1) above shall have the effect in relation to any reference under section 32 above of applying—
- (a) so much of Part V of the 1973 Act as requires the Monopolies Commission to consider any of the matters set out in subsection (1) of section 64 of that Act; or
  - (b) the provisions of sections 69(2) to (4) and 75(3) of that Act (power to restrict matters referred).
- (3) In determining on a reference under section 32 above whether any matter operates, or may be expected to operate, against the public interest the Monopolies Commission—
- (a) shall have regard to the desirability of giving effect to the principle that the number of water enterprises which are under independent control should not be reduced so as to prejudice the Director's ability, in carrying out his functions by virtue of this Act, to make comparisons between different such water enterprises; and
  - (b) shall have regard to the desirability of achieving any other purpose so far only as they are satisfied—

---

*Status: This is the original version (as it was originally enacted).*

---

- (i) that that other purpose can be achieved in a manner that does not conflict with that principle; or
  - (ii) that the achievement of that other purpose is of substantially greater significance in relation to the public interest than that principle and cannot be brought about except in a manner that conflicts with that principle.
- (4) No order shall be made under Part V of the 1973 Act in consequence of any merger reference made under section 32 above in respect of an actual merger unless the reference was made within the period of six 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 notice of the Secretary of State or the Director General of Fair Trading or were made public within the meaning of section 64 of the 1973 Act;
- and if on such a reference the Monopolies Commission are satisfied that the reference was not made within that period their report on the reference shall state that fact and nothing else.

### **35 Construction of merger provisions**

- (1) In this Chapter—
- “enterprise” has the meaning given for the purposes of sections 64 to 77 of the 1973 Act by section 63(2) of that Act; and
  - “water enterprise” means an enterprise carried on by a relevant undertaker.
- (2) References in this Chapter, 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 V of the 1973 Act, to be distinct enterprises; and sections 66 and 66A of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter as they have effect for the purposes of that Part.
- (3) The reference in section 34(3) above to the number of water enterprises under independent control is a reference to the number of water enterprises there would be if two or more water enterprises counted as one enterprise wherever they would be treated for the purposes of Part V of the 1973 Act as having ceased to be distinct enterprises.
- (4) Nothing in sections 32 to 34 above shall prejudice any power of the Secretary of State, in a case in which he is not required to make a reference under section 32 above, to make a merger reference under Part V of the 1973 Act in respect of any actual or prospective merger of two or more water enterprises.