



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART IV

#### SEWERAGE SERVICES

##### Modifications etc. (not altering text)

- C1** Pt. IV: power to apply conferred (1.12.1991) by [Water Resources Act 1991 \(c. 57, SIF 130\)](#), **ss. 78(2)(b), 225(2)**.
- C2** Pt. IV saved (1.12.1991) by [Statutory Water Companies Act 1991 \(c. 58, SIF 130\)](#), **ss. 1(4), 17(2)**.

### CHAPTER I

#### GENERAL FUNCTIONS OF SEWERAGE UNDERTAKERS [<sup>F1</sup>ETC]

##### Textual Amendments

- F1** Word in Pt. 4 Ch. 1 heading inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 84**; [S.I. 2016/465](#), art. 2(m), **Sch. 1 para. 1(o)** (with **Sch. 2**) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

#### *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 [<sup>F2</sup>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

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- (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—
- (a) by the Secretary of State; or
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (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.

#### Textual Amendments

- F2** Words in s. 94(1)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 97(3)**, 105(3); [S.I. 2004/641](#), **art. 4(b)** (with [Sch. 3 para. 7](#))

#### Modifications etc. (not altering text)

- C3** S. 94 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), **reg. 1(1)(b)**, **Sch. 1 para. 10(2)** (with **reg. 1(1)(c)**)

## 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
- (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.

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- (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 Director;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the Director's determination on such a reference to be enforceable in such manner as may be prescribed;
  - (d) prescribe circumstances in which a sewerage undertaker is to be exempted from requirements of the regulations.

<sup>F3</sup>[(5) Where the Director determines any dispute in accordance with regulations under this section he shall, in such manner as may be specified in the regulations, give his reasons for reaching his decision with respect to the dispute.]

#### Textual Amendments

**F3** S. 95(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 56\(6\), Sch. 1 para.24](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

#### [<sup>F4</sup>95ZA Standards of performance in connection with provision of sewerage services: sewerage licensees

- (1) For the purpose of establishing overall standards of performance in connection with the provision of sewerage services by sewerage licensees in accordance with their retail authorisations, the Secretary of State may, in accordance with section 96ZA, by regulations—
  - (a) impose requirements in connection with the provision of sewerage services;
  - (b) provide for a requirement so imposed to be enforceable under section 18 by—
    - (i) the Secretary of State, or
    - (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (2) The Secretary of State may, in accordance with section 96ZA, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in the Secretary of State's opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) may provide that if a sewerage licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who—
  - (a) is affected by the failure, and
  - (b) is of a prescribed description.

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- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may—
- (a) include in a standard of performance a requirement for a sewerage licensee, in prescribed circumstances, to inform a person of that person's rights by virtue of any such regulations;
  - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
  - (d) prescribe circumstances in which a sewerage licensee is to be exempted from requirements of the regulations.
- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.]

#### Textual Amendments

**F4** S. 95ZA inserted (1.11.2016) by [Water Act 2014 \(c. 21\)](#), ss. **30(1)**, 94(3); S.I. 2016/1007, art. 2(e)

#### [95A <sup>F5</sup>Information with respect to levels of performance.

- (1) The Director shall from time to time collect information with respect to—
- (a) the compensation paid by sewerage undertakers under regulations under section 95(2) above; <sup>F6</sup>...
  - [ the compensation paid by sewerage licensees under regulations under <sup>F7</sup>(aa) section 95ZA(2); and]
  - (b) the levels of overall performance achieved by sewerage undertakers [<sup>F8</sup>or sewerage licensees] in connection with the provision of sewerage services.
- (2) At such times as the Director may direct, each sewerage undertaker shall give the following information to the Director—
- (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.

[ At such times as the Authority may direct, each sewerage licensee is to give the <sup>F9</sup>(2A) following information to the Authority—

- (a) as respects each standard established by regulations under section 95ZA(1), such information with respect to the level of performance achieved by the licensee as may be specified in the direction;
- (b) as respects each standard prescribed by regulations under section 95ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.]

[ The requirements in subsections (2) and (2A) are enforceable by the Authority under <sup>F10</sup>(3) section 18.]

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- (4) The Director shall, at least once in every year, arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or given to him under this section as it may appear to him expedient to give to customers or potential customers of sewerage undertakers [<sup>F11</sup>or sewerage licensees].
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as practicable—
  - (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.]

#### Textual Amendments

- F5** S. 95A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.31](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 3, Sch. Pt. I](#)
- F6** Word in s. 95A(1) repealed (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(3\)\(a\), 94\(3\); S.I. 2016/1007, art. 2\(e\)](#)
- F7** S. 95A(1)(aa) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(3\)\(b\), 94\(3\); S.I. 2016/1007, art. 2\(e\)](#)
- F8** Words in s. 95A(1)(b) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(3\)\(c\), 94\(3\); S.I. 2016/1007, art. 2\(e\)](#)
- F9** S. 95A(2A) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(4\), 94\(3\); S.I. 2016/1007, art. 2\(e\)](#)
- F10** S. 95A(3) substituted (1.1.2015 for specified purposes, 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\), ss. 30\(5\), 94\(3\); S.I. 2014/3320, art. 2\(2\)\(b\); S.I. 2016/1007, art. 2\(e\)](#)
- F11** Words in s. 95A(4) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), ss. 30\(6\), 94\(3\); S.I. 2016/1007, art. 2\(e\)](#)

#### [<sup>F12</sup>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 [<sup>F13</sup>or sewerage licensees] and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to sewerage undertakers [<sup>F14</sup>or sewerage licensees] (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.]

#### Textual Amendments

- F12** S. 95B inserted (1.10.2005) by [Water Act 2003 \(c. 37\), ss. 45\(2\), 105\(3\); S.I. 2005/2714, art. 2\(e\)](#) (with [Sch. para. 8](#))
- F13** Words in s. 95B(1) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 85\(a\); S.I. 2017/462, art. 3\(k\)\(x\)](#)
- F14** Words in s. 95B(2) inserted (1.4.2017) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 85\(b\); S.I. 2017/462, art. 3\(k\)\(x\)](#)

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## 96 Procedure for regulations under section 95.

- [<sup>F15</sup>(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) [<sup>F16</sup>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—
- <sup>F17</sup>[(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—
- (i) on every sewerage undertaker specified in the application; <sup>F18</sup> . . .
  - (ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;
  - (iii) [<sup>F19</sup>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 Director; and
    - (ii) by any affected sewerage undertaker [<sup>F20</sup>or person or body on whom a copy of the application has been served under paragraph [<sup>F21</sup>(b)] above],

of representations or objections with respect to the Director’s proposals and any modifications proposed by the Secretary of State; and
  - (d) the Secretary of State has considered [<sup>F22</sup>the summary mentioned in subsection (2)(bb) below,] the Director’s reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- <sup>F23</sup>[(1A) Before making an application to the Secretary of State under this section the Director shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.]
- (2) An application made by the Director to the Secretary of State complies with this subsection if it—
- (a) sets out [<sup>F24</sup>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 [<sup>F25</sup>the regulations] should apply
- [<sup>F26</sup>(bb) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;]; and
- (c) summarises the Director’s reasons for his proposals.
- (3) The Secretary of State shall not make any regulations [<sup>F27</sup>on an application by the Authority under this section] except where—

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- (a) the only provisions of the regulations are [<sup>F28</sup>those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority's application or to those proposals] with such modifications as the Secretary of State considers appropriate; and
  - (b) each of the modifications (if any) of the Director's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
    - (i) to the Director; <sup>F29</sup> . . .
    - (ii) to any sewerage undertaker appearing to the Secretary of State to be likely to be affected by the modifications<sup>F30</sup> and
    - (iii) to any person or body on whom a copy of the Authority's application was served under subsection (1)(b) above.]
- [<sup>F31</sup>(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;
  - (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.]

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### Textual Amendments

- F15** S. 96(A1) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(2)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F16** Words in s. 96(1) substituted (1.4.2005) for "words preceding paragraph (a), and paragraph (a)" by virtue of [Water Act 2003 \(c. 37\)](#), **ss. 42(3)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F17** S. 96(1)(b) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 25(2)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F18** Word in s. 96(1)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(3)(b)**, 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F19** S. 96(1)(b)(iii)(iv) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(3)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F20** Words in s. 96(1)(c)(ii) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 25(3)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F21** Words in s. 96(1)(c)(ii) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(3)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F22** Words in s. 96(1)(d) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 30(2)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F23** S. 96(1A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 30(3)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F24** Words in s. 96(2)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(4)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F25** Words in s. 96(2)(b) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(4)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F26** S. 96(2)(bb) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 30(4)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F27** Words in s. 96(3) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(5)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F28** Words in s. 96(3)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(5)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F29** Word in s. 96(3)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(5)(c)**, 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F30** S. 96(3)(b)(iii) and preceding word inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(5)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)
- F31** S. 96(4)-(8) added (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 42(6)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Schs. 1](#), 2)

### [<sup>F32</sup>96ZAProcedure for regulations under section 95ZA

- (1) Section 96 applies for the purposes of making regulations under section 95ZA as it applies for the purposes of making regulations under section 95.
- (2) In the application of section 96 by virtue of subsection (1), a reference to a sewerage undertaker is to be treated as a reference to a sewerage licensee.]

### Textual Amendments

- F32** S. 96ZA inserted (15.7.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 30(7)**, 94(3); S.I. 2015/1469, **art. 2(d)**



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#### Modifications etc. (not altering text)

- C4 S. 96ZA(2) modified (temp.) (1.7.2015) by [The Water Act 2014 \(Commencement No. 4 and Transitional Provisions\) Order 2015 \(S.I. 2015/1469\)](#), [art. 5\(2\)\(5\)](#)

#### [96A <sup>F33</sup>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 Director may direct, take steps to inform its customers [<sup>F34</sup> and, if the direction so specifies, sewerage licensees using the undertaker's sewerage system for the purpose of providing sewerage services to the premises of customers,] of—
- the standards of overall performance established under section 95(1)(b) above which are applicable to that undertaker; and
  - that undertaker's level of performance as respects each of those standards.

[ Each sewerage licensee must, in such form and manner and with such frequency as

- <sup>F35</sup>(1A) the Authority may direct, take steps to inform the licensee's customers of—
- the standards of overall performance established under section 95ZA(1) which are applicable to that licensee;
  - that licensee's level of performance as regards those standards.

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

- (2) In giving [<sup>F36</sup>a direction under subsection (1) or (1A)], the Director shall not specify a frequency of less than once in every period of twelve months.

[ The sewerage licensees referred to in subsection (1) shall, if the Authority so directs,

- <sup>F37</sup>(2A) pass on the information about the matters mentioned in that subsection to their customers.

(2B) In subsection (1), the reference to the sewerage undertaker's sewerage system is to be construed in accordance with section 17BA(7).]

- (3) The duty of a sewerage undertaker [<sup>F38</sup>or sewerage licensee] to comply with this section shall be enforceable by the Director under section 18 above.]

#### Textual Amendments

- F33** S. 96A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s.32](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F34** Words in s. 96A(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(2\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F35** S. 96A(1A)(1B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(3\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F36** Words in s. 96A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(4\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F37** S. 96A(2A)(2B) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(5\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F38** Words in s. 96A(3) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 86\(6\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(p\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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*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 <sup>M1</sup>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.
- [<sup>F39</sup>(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
  - (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—
 

[<sup>F40</sup>“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 <sup>M2</sup>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;

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- (aa) [<sup>F41</sup>in relation to the Mayoral development corporation for any Mayoral development area, means that area;]
- (b) [<sup>F42</sup>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; [<sup>F43</sup>and]
- (d) <sup>F44</sup> .....
- (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;
- (aa) [<sup>F45</sup>the Mayoral development corporation for any Mayoral development area;]
- (b) the [<sup>F46</sup>new towns residuary body], [<sup>F47</sup>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 <sup>M3</sup>Local Government, Planning and Land Act 1980.

<sup>F48</sup>(6) .....

#### Textual Amendments

- F39** S. 97(4A) inserted (11.7.2001 for E. and 1.4 2002 for W.) by [S.I. 2001/2237](#), [arts. 2, 27](#); [S.I. 2002/808](#), {art. 26(a)}
- F40** S. 97(5): definitions of "executive and executive arrangements" inserted (11.7.2001 for E. and 1. 4. 2002 for W. ) by [S.I. 2001/2237](#), [arts. 2, 27](#); [S.I. 2002/808](#), [art. 26\(b\)](#)
- F41** Words in s. 97(5) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), [Sch. 22 para. 41\(a\)](#)
- F42** S. 97(5): paras. (b)(ba) in definition of "relevant area" substituted (1.12.2008) for para. (b) by [Housing and Regeneration Act 2008 \(c. 17\)](#), ss. 56, 325, [Sch. 8 para. 57\(a\)](#); [S.I. 2008/3068](#), [art. 2\(1\)\(w\)](#) (with savings and transitional provisions in arts. 6-13)
- F43** S. 97(5): word in para. (c) in definition of “relevant area” inserted (1.10.1998) by [1998 c. 38](#), s. 129(2), [Sch. 15 para. 17\(a\)](#) (with ss. 137(1), 139(2), 143(2)); [S.I. 1998/2244](#), [art. 4](#)
- F44** S. 97(5): para. (d) in definition of “relevant area” repealed (1.10.1998) by [1998 c. 38](#), s. 152, [Sch. 18 Pt. IV](#) (with ss. 137(1), 139(2), 143(2)); [S.I. 1998/2244](#), [art. 4](#)
- F45** Words in s. 97(5) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), [Sch. 22 para. 41\(b\)](#)
- F46** S. 97(5): words in definition of "relevant authority" substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), ss. 56, 325, [Sch. 8 para. 57\(2\)](#); [S.I. 2008/3068](#), [art. 2\(1\)\(w\)](#) (with savings and transitional provisions in arts. 6-13)
- F47** S. 97(5): words in para. (b) in definition of “relevant authority” substituted (1.10.1998) by [1998 c. 38](#), s. 129(2), [Sch. 15 para. 17\(b\)](#) (with ss. 137(1), 139(2), 143(2)); [S.I. 1998/2244](#), [art. 4](#)
- F48** S. 97(6) repealed (19.11.1998) by [1998 c. 43](#), s. 1(1), [Sch. 1 Pt. X](#), Group 3

#### Marginal Citations

- M1** [1972 c. 70](#).
- M2** [1981 c. 64](#).

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**M3** 1980 c. 65.

## 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 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.

[<sup>F49</sup>(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;

[<sup>F50</sup>(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 <sup>M4</sup>New Towns Act 1981—

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- (i) the [<sup>F51</sup>new towns residuary body]; and
  - (ii) <sup>F52</sup> . . . the development corporation for the new town <sup>F52</sup> . . . ;
- 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 <sup>M5</sup>Local Government, Planning and Land Act 1980, the urban development corporation.
- [<sup>F53</sup>(2A) Each of the following persons shall be entitled to require the provision of a lateral drain, that is to say—
- (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 [<sup>F54</sup>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.]
- [<sup>F55</sup>(2B) The duty to provide a public sewer or the provision of a lateral drain under this section does not arise in relation to premises in a retail exit area that are not household premises.]
- (3) The duty of a sewerage undertaker under this section to provide a public sewer [<sup>F56</sup>or, as the case may be, a lateral drain] shall be owed to the person who requires the provision of the sewer [<sup>F57</sup>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 [<sup>F58</sup>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 <sup>F59</sup> . . . to which a requirement under this section relates, is a reference—
    - (a) where there are buildings on [<sup>F60</sup>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 [<sup>F61</sup>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.

#### Textual Amendments

- F49** S. 98(1A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(2)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F50** S. 98(2)(ca) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), **Sch. 22 para. 42**

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- F51** Words in s. 98(2)(d)(i) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), ss. 56, 325, [Sch. 8 para. 58\(a\)](#); S.I. 2008/3068, [art. 2\(1\)\(w\)](#) (with savings and transitional provisions in arts. 6-13)
- F52** Words in s. 98(2)(d)(ii) repealed (1.10.1998) by 1998 c. 38, s. 152, [Sch. 18 Pt. IV](#) (with ss. 137(1), 139(2), 143(2)); S.I. 1998/2244, [art. 4](#)
- F53** S. 98(2A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [95\(3\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F54** Words in s. 98(2A)(d)(i) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), ss. 56, 325, [Sch. 8 para. 58\(b\)](#); S.I. 2008/3068, [art. 2\(1\)\(w\)](#) (with savings and transitional provisions in arts. 6-13)
- F55** S. 98(2B) inserted (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), reg. 1(2), [Sch. 2 para. 7](#)
- F56** Words in s. 98(3) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [95\(4\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F57** Words in s. 98(3) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [95\(4\)](#), 105(3); S.I. 2004/641, [art. 4](#) (with [Sch. 3 para. 7](#))
- F58** Word in s. 98(4) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), [Sch. 1 para. 26](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, [Sch. Pt. I](#)
- F59** Words in s. 98(5) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 95(5)(a), 101(2), 105(3), [Sch. 9 Pt. 3](#); S.I. 2004/641, [art. 4\(b\)\(d\)\(i\)](#) (with [Sch. 3 para. 7](#))
- F60** Words in s. 98(5)(a) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [95\(5\)\(b\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F61** Words in s. 98(5)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. [95\(5\)\(c\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

#### Marginal Citations

- M4** 1981 c. 64.  
**M5** 1980 c. 65.

## 99 Financial conditions of compliance.

- (1) The conditions mentioned in section 98(1)(c) [<sup>F62</sup>or 98(1A)(c)] above are satisfied in relation to a requirement for the provision of a public sewer [<sup>F63</sup>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) [<sup>F64</sup>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 [<sup>F63</sup>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—
- [<sup>F65</sup>(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 sewer; or

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- (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.
- [<sup>F66</sup>(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.]
- [<sup>F67</sup>(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 Director; or
  - (b) in default of a determination under paragraph (a) above, by the Director,
- 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 Director for the purposes of subsection (4) above—
- [<sup>F68</sup>(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,
- [<sup>F69</sup>may be referred to the Authority for determination under section 30A above by either party to the dispute.]
- [<sup>F70</sup>(7) In this section “relevant deficit” and “discounted aggregate deficit” have the meanings given by sections 100 and 100A below, respectively.]

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### Textual Amendments

- F62** Words in s. 99(1) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(6)(a)(i)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F63** Words in s. 99(1) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(6)(a)(ii)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F64** Words in s. 99(1)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(6)(a)(iii)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F65** S. 99(2)(a) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 93(1)(a)(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F66** S. 99(2A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(6)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F67** S. 99(3) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(6)(c)**, 105(3); S.I. 2004/641, **art. 4(c)** (with [Sch. 3 para. 7](#))
- F68** S. 99(5)(a) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(6)(d)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F69** Words in s. 99(6) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 93(1)(b)(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F70** S. 99(7) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 93(1)(c)(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

## 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 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 Director; or
  - (b) in default of such a determination, by the Director.
- (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



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- (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 Director 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
  - (b) may be revoked at any time except in relation to a public sewer [<sup>F71</sup>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 <sup>M6</sup>Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 71 of the <sup>M7</sup>Water Act 1989);
  - (b) a requirement under the provisions of section 16 of the <sup>M8</sup>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.

#### Textual Amendments

**F71** Words in s. 100(8)(b) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 93(2), 105(3)**; S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

#### Marginal Citations

**M6** 1991 c. 60.

*Status: Point in time view as at 19/12/2017.*

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**M7** 1989 c. 15.

**M8** 1973 c. 37.

**[<sup>F72</sup>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 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.]

**Textual Amendments**

**F72** S. 100A inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 93(3)(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

*Status: Point in time view as at 19/12/2017.*

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**[<sup>F73</sup>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.
- (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,

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are determined under subsection (3) above.]

**Textual Amendments**

**F73** S. 101 substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 95(7)(8)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))

*<sup>F74</sup>[Provision of public sewers otherwise than by requisition*

**Textual Amendments**

**F74** Cross heading and s. 101A inserted (1.2.1996 for specified purposes and otherwise 1.4.1996) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 103** (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/186, **arts. 2, 3**

**<sup>F75</sup>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 <sup>F76</sup> . . . ;
  - (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 <sup>F77</sup> . . . 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—

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- (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 discharge its functions under this section.
- (5) <sup>F78</sup>... 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 Director.
- (7) [<sup>F79</sup>Subsections (7A) and (7B) apply where there is a 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,
- <sup>F80</sup> ...
- [ The dispute is to be determined by the appropriate person and may be referred to the
- <sup>F81</sup>(7A) appropriate person for determination by either of the parties to the dispute.
- (7B) If the dispute is between a sewerage undertaker and an owner or occupier of premises in Wales, the NRBW must provide advice in relation to any of the matters mentioned in subsection (7)(a) to (c) if so requested by—
- (a) either of the parties to the dispute, or
  - (b) the appropriate person.
- (7C) Any advice provided by the NRBW under subsection (7B) must be provided to both parties to the dispute and to the appropriate person.]
- (8) The [<sup>F82</sup>appropriate person] —
- (a) shall notify the parties of the reasons for its decision on any dispute referred to it under [<sup>F83</sup>subsection (7A)] 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.

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- (9) The decision of the [<sup>F84</sup>appropriate person] on any dispute referred to it under [<sup>F85</sup>subsection (7A)] 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 [<sup>F86</sup>appropriate person] has determined under this section, that it is under such a duty and where any time accepted by it, or determined by the [<sup>F86</sup>appropriate person] under this section, as the time by which the duty is to that extent to be performed has passed.
- [ In this section “the [<sup>F88</sup>appropriate person] ” means—
- <sup>F87</sup>(11) (a) the Environment Agency, in relation to disputes between sewerage undertakers and owners or occupiers of premises in England;
- (b) [<sup>F89</sup>the Welsh Ministers] , in relation to disputes between sewerage undertakers and owners or occupiers of premises in Wales<sup>[F90]</sup>, or such person as the Welsh Ministers may from time to time appoint as the appropriate person in relation to such disputes.]]
- [ A person may be appointed as the appropriate person under subsection (11)(b) only if
- <sup>F91</sup>(12) the person is independent of the NRBW.
- (13) A person is independent of the NRBW for the purposes of subsection (12) if the person is—
- (a) an individual who is not a member of the NRBW or the NRBW's staff, or
- (b) a body none of whose members is a member of the NRBW or the NRBW's staff.]]

#### Textual Amendments

- F75** S. 101A inserted (1.2.1996 for specified purposes and otherwise 1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 103** (with ss. 7(6), 115, 117); S.I. 1996/186, **arts. 2, 3**
- F76** Words in s. 101A(2)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 94(a), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4** (with **Sch. 3 para. 7**)
- F77** Words in s. 101A(2)(c) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 94(b), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4** (with **Sch. 3 para. 7**)
- F78** Words in s. 101A(5) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(l), **Sch. 22 para. 17**
- F79** Words in s. 101A(7) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(2)(a)**, 94(3); S.I. 2015/1786, **art. 2** (with **art. 3**)
- F80** Words in s. 101A(7) repealed (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(2)(b)**, 94(3); S.I. 2015/1786, **art. 2** (with **art. 3**)
- F81** Ss. 101A(7A)-(7C) inserted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(3)**, 94(3); S.I. 2015/1786, **art. 2** (with **art. 3**)
- F82** Words in s. 101A(8) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(5)**, 94(3); S.I. 2015/1786, **art. 2** (with **art. 3**)
- F83** Words in s. 101A(8)(a) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(4)**, 94(3); S.I. 2015/1786, **art. 2** (with **art. 3**)
- F84** Words in s. 101A(9) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(5)**, 94(3); S.I. 2015/1786, **art. 2** (with **art. 3**)
- F85** Words in s. 101A(9) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(4)**, 94(3); S.I. 2015/1786, **art. 2** (with **art. 3**)
- F86** Words in s. 101A(10) substituted (1.11.2015) by Water Act 2014 (c. 21), **ss. 41(5)**, 94(3); S.I. 2015/1786, **art. 2** (with **art. 3**)

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- F87** S. 101A(11) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 237\(4\)](#) (with Sch. 7)
- F88** Words in s. 101A(11) substituted (1.11.2015) by [Water Act 2014 \(c. 21\)](#), [ss. 41\(5\)](#), 94(3); S.I. 2015/1786, art. 2 (with art. 3)
- F89** Words in s. 101A(11)(b) substituted (1.11.2015) by [Water Act 2014 \(c. 21\)](#), [ss. 41\(6\)\(a\)](#), 94(3); S.I. 2015/1786, art. 2 (with art. 3)
- F90** Words in s. 101A(11)(b) inserted (1.11.2015) by [Water Act 2014 \(c. 21\)](#), [ss. 41\(6\)\(b\)](#), 94(3); S.I. 2015/1786, art. 2 (with art. 3)
- F91** S. 101A(12)(13) inserted (1.11.2015) by [Water Act 2014 \(c. 21\)](#), [ss. 41\(7\)](#), 94(3); S.I. 2015/1786, art. 2 (with art. 3)

[<sup>F92</sup>**101B**]<sup>F92</sup>**Power to construct lateral drains following provision of public sewer]**

- (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.]

**Textual Amendments**

- F92** S. 101B inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 95\(9\)\(10\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with Sch. 3 para. 7)

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*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,<sup>F93</sup> . . .
  - [<sup>F94</sup>(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.
- (2) The owner, or any of the owners, of any sewer [<sup>F95</sup>, 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 [<sup>F95</sup>, 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—
- [<sup>F96</sup>(za) shall give notice of its proposal to any sewerage licensee which uses, or removes matter from, the undertaker's sewerage system in accordance with a retail, wholesale or disposal authorisation;]
  - (a) shall give notice of its proposal to the owner or owners of the sewer [<sup>F97</sup>, 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 [<sup>F98</sup> 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 [<sup>F99</sup> 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 [<sup>F100</sup>, 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.



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- (6) Any person who immediately before the making of a declaration under this section was entitled to use the sewer [F101 or lateral drain] in question shall be entitled to use it, or any sewer [F101 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.

#### Textual Amendments

- F93** Word in s. 102(1)(a) repealed (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(a)(3), 105(3), Sch. 9 Pt. 3; S.I. 2004/641, art. 4(b)(d)(i) (with Sch. 3 para. 7)
- F94** S. 102(1)(aa) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(a)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F95** Words in s. 102(2) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(b)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F96** S. 102(4)(za) inserted (1.4.2017 for specified purposes) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 90; S.I. 2017/462, art. 3(k)(xi)
- F97** Words in s. 102(4)(a) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(c)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F98** Words in s. 102(5)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(i)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F99** Words in s. 102(5)(c) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(ii)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F100** Words in s. 102(5)(d) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(d)(iii)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)
- F101** Words in s. 102(6) inserted (28.5.2004) by Water Act 2003 (c. 37), ss. 96(1)(e)(3), 105(3); S.I. 2004/641, art. 4(b) (with Sch. 3 para. 7)

#### Modifications etc. (not altering text)

- C5** S. 102 excluded (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), regs. 1(1)(b), 5(2) (with reg. 1(1)(c))

### 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; F102 . . .
- [F103(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 area of another sewerage undertaker,
- it shall give notice to the other undertaker.

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- (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.
- [<sup>F104</sup>(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 [<sup>F105</sup>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.

#### Textual Amendments

- F102** Word in s. 103(1)(a) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(2)(a)(3), 105(3), [Sch. 9 Pt. 3](#); S.I. 2004/641, [art. 4\(b\)\(d\)\(i\)](#) (with [Sch. 3 para. 7](#))
- F103** S. 103(1)(aa) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(2)(a)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F104** S. 103(3) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(2)(b)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F105** Words in s. 103(4)(a) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), ss. 96(2)(c)(3), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

## 104 Agreements to adopt sewer, drain or sewage disposal works, at future date

- [<sup>F106</sup>(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

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- (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 [<sup>F107</sup>mentioned in paragraph (a) or (b) of subsection (1) above] may [<sup>F108</sup>make an application to a sewerage undertaker requesting the undertaker to make an agreement under this section.][<sup>F108</sup>request a sewerage undertaker to make an agreement under this section.]
- (3) [<sup>F109</sup>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) [<sup>F110</sup>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 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 [<sup>F111</sup>, lateral drain] or works to which it relates.
- [<sup>F112</sup>(5A) The reference in subsection (5) to an agreement made under this section includes a reference to—
  - (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
  - (b) any agreement which has been varied by order under section 105ZB(1).]
- (6) [<sup>F113</sup>.....
- [<sup>F114</sup>(6A) [<sup>F115</sup>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;

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- (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.]]

[<sup>F116</sup>(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.]

[<sup>F117</sup>(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.]

#### Textual Amendments

- F106** S. 104(1) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(a)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F107** Words in s. 104(2) substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(b)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F108** Words in s. 104(2) substituted (1.10.2017 for E.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(a)**, 94(3); S.I. 2017/462, art. 4(b)
- F109** S. 104(3) repealed (1.10.2017 for E.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(b)**, 94(3); S.I. 2017/462, art. 4(b)
- F110** S. 104(4) repealed (1.10.2017 for E.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(b)**, 94(3); S.I. 2017/462, art. 4(b)
- F111** Words in s. 104(5) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(c)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F112** S. 104(5A) inserted (1.10.2017 for E.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(c)**, 94(3); S.I. 2017/462, art. 4(b)
- F113** S. 104(6) repealed (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(d)**, 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 4(b)(d)(ii)** (with Sch. 3 para. 7)
- F114** S. 104(6A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(e)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)
- F115** S. 104(6A) repealed (1.10.2017 for E.) by [Water Act 2014 \(c. 21\)](#), **ss. 11(2)(b)**, 94(3); S.I. 2017/462, art. 4(b)
- F116** S. 104(7)(8) substituted (28.5.2004) for s. 104(7) by [Water Act 2003 \(c. 37\)](#), **ss. 96(4)(f)**, 105(3); S.I. 2004/641, {art. 4(b)} (with Sch. 3 para. 7)

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**F117** S. 104(9) added (1.10.2010 for specified purposes, 1.10.2012 for specified purposes) by Flood and Water Management Act 2010 (c. 29), ss. 42(3), 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2012/2048, art. 2 (with art. 3)

## 105 Appeals with respect to adoption.

- (1) An owner of any sewer [<sup>F118</sup>, lateral drain] or sewage disposal works may appeal to the [<sup>F119</sup>Director] if—
- he is aggrieved by the proposal of a sewerage undertaker to make a declaration under section 102 above; or
  - he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.

[<sup>F120</sup>(2) [<sup>F121</sup>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 [<sup>F122</sup>, lateral drain] or sewage disposal works shall be—
- 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
  - 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 [<sup>F119</sup>Director] may—
- 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
  - [<sup>F123</sup>in the case of an appeal under subsection (2) above—
    - uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
    - 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 [<sup>F119</sup>Director] makes a declaration under subsection (4)(a) above, he may, if he thinks fit—
- specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
  - direct that his declaration shall not take effect unless any conditions so specified are accepted.
- (6) [<sup>F124</sup>Where the [<sup>F119</sup>Director] makes an agreement under subsection (4)(b) above on behalf of a sewerage undertaker, he may do so on such terms as he considers reasonable or, as the case may be, on the terms offered by the undertaker subject to such modifications as he considers appropriate for ensuring that the terms of the agreement are reasonable.]

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- (7) The <sup>F119</sup>Director], 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; <sup>F125</sup>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) above shall have effect with the necessary modifications.]

#### Textual Amendments

- F118** Words in s. 105(1) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(5)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F119** Word in s. 105 substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 35(7)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt.II
- F120** S. 105(2) substituted (1.10.2010 for specified purposes, 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), **ss. 42(2)**, 49(3) (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2012/2048, art. 2 (with art. 3)
- F121** S. 105(2) repealed (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 92(a)**; S.I. 2017/462, art. 4(d)(ii) (as substituted by S.I. 2017/926, art. 2(2))
- F122** Words in s. 105(3) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 96(5)(b)**, 105(3); S.I. 2004/641, **art. 4(b)** (with [Sch. 3 para. 7](#))
- F123** S. 105(4)(b) and word repealed (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 92(b)**; S.I. 2017/462, art. 4(d)(ii) (as substituted by S.I. 2017/926, art. 2(2))
- F124** S. 105(6) repealed (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 92(c)**; S.I. 2017/462, art. 4(d)(ii) (as substituted by S.I. 2017/926, art. 2(2))
- F125** Words in s. 105(7) repealed (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 92(d)**; S.I. 2017/462, art. 4(d)(ii) (as substituted by S.I. 2017/926, art. 2(2))

#### <sup>F126</sup>105ZA Adoption at a future date: orders by Authority

- (1) This section applies where a person mentioned in section 104(1)(a) or (b) makes a request to a sewerage undertaker under section 104(2).
- (2) The person or the sewerage undertaker may apply to the Authority for an order under subsection (4) if the person and the sewerage undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the sewerage undertaker, make an order under subsection (4) if the Authority is satisfied that—
  - (a) where the person is such person as is mentioned in section 104(1)(a), it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
  - (b) the person and the sewerage undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—
  - (a) require the sewerage undertaker to give such undertakings as to the vesting of the sewer, such part of the drain as constitutes the lateral drain or the works in the undertaker as the Authority may specify, and
  - (b) impose such terms and conditions as regards taking the benefit of the undertakings as the Authority may specify.

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- (5) An order under subsection (4) has effect as an agreement under section 104 between the person and the sewerage undertaker.
- (6) The Authority may not make an order under subsection (4) with respect to—
  - (a) a sewer, drain or sewage disposal works situated in the area of another 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 (7) is satisfied.
- (7) The conditions are that—
  - (a) the other sewerage undertaker has consented in writing to the making of the order, or
  - (b) the Minister, on an application made to the Minister, has disapplied paragraph (a), either unconditionally or subject to such conditions as the Minister thinks fit.
- (8) “The Minister” means—
  - (a) the Secretary of State, as regards the consent of a sewerage undertaker whose area is wholly or mainly in England;
  - (b) the Welsh Ministers, as regards the consent of a sewerage undertaker whose area is wholly or mainly in Wales.
- (9) Neither the CMA nor the Authority may exercise, in respect of an agreement for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (10) Subsection (9)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (11) In exercising its functions under this section, the Authority must have regard to the desirability of—
  - (a) facilitating effective competition within the sewerage services industry;
  - (b) the recovery by the sewerage undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the ability of the sewerage undertaker 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 sewerage undertaker to meet its existing obligations, or likely future obligations, to provide sewerage services.

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### Textual Amendments

**F126** Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 11\(3\)](#), [94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(c\)\(ii\)](#); [S.I. 2017/462](#), [arts. 3\(e\)\(ii\)](#), [4\(b\)](#)

## 105ZB Variation and termination of section 104 agreements

- (1) On the application of a party to a section 104 agreement to vary (or terminate) the agreement, the Authority may—
  - (a) if it appears to the Authority that it is necessary or expedient that the section 104 agreement should be varied (or terminated),
  - (b) if the Authority is satisfied, in the case of an application to vary the agreement involving such person as is mentioned in section 104(1)(a), that it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
  - (c) if the Authority is satisfied that variation (or termination) cannot be achieved by agreement within a reasonable time,
 by order vary (or terminate) the section 104 agreement.
- (2) If an order under subsection (1) is made in relation to a section 104 agreement, the agreement—
  - (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect, as the case may be.
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 104 agreement, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement to vary or terminate a section 104 agreement, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the sewerage undertaker in complying with its obligations under the section 104 agreement in question and to the desirability of—
  - (a) facilitating effective competition within the sewerage services industry;
  - (b) the recovery by the sewerage undertaker of the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the ability of the sewerage undertaker to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;



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- (d) not putting at risk the ability of the sewerage undertaker to meet its existing obligations, or likely future obligations, to provide sewerage services.
- (7) In this section and sections 105ZC to 105ZI “section 104 agreement” means an agreement with a sewerage undertaker for the vesting of a sewer, drain or sewage disposal works in a sewerage undertaker at a future date or on a future event and includes—
- (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
  - (b) any agreement which has been varied by order under subsection (1).

#### Textual Amendments

**F126** Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. [11\(3\)](#), [94\(3\)](#); S.I. 2015/1938, art. 2(c)(ii); S.I. 2017/462, arts. 3(e)(ii), 4(b)

### 105ZC Codes in respect of section 104 agreements

- (1) The Authority must issue a code in respect of section 104 agreements.
- (2) The code may make provision about—
  - (a) procedures in connection with making an agreement under section 104;
  - (b) procedures in connection with varying or terminating a section 104 agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 105ZA(4) or 105ZB(1);
  - (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a sewerage undertaker;
  - (e) the terms and conditions of a section 104 agreement;
  - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 104 agreement;
  - (g) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) Provision under subsection (2)(d) may include in particular provision about circumstances relating to—
  - (a) the nature of the work;
  - (b) the kind of premises supplied or to be supplied.
- (4) Provision under subsection (2)(e) may include in particular provision about terms and conditions as regards—
  - (a) constructing associated infrastructure;
  - (b) vesting associated infrastructure in a sewerage undertaker;
  - (c) making a communication with public sewers.
- (5) If the Authority considers that a sewerage undertaker is not acting as required by the code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.

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- (6) The Authority may not give a direction under subsection (5) requiring a person to enter into, vary or terminate an agreement.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
- (8) The code may make different provision for different persons or descriptions of person.
- (9) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (10) A revised code may include provision for applying any of its revisions to section 104 agreements made before the revised code comes into force.

#### Textual Amendments

**F126** *Ss. 105ZA-105ZI* inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3)**, 94(3); S.I. 2015/1938, art. 2(c)(ii); S.I. 2017/462, arts. 3(e)(ii), 4(b)

#### **105ZD Codes under section 105ZC: procedure**

- (1) Before issuing a code under section 105ZC, the Authority must—
  - (a) prepare a draft of the proposed code under section 105ZC, and
  - (b) consult such persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (3) Before a code under section 105ZC prepared by the Authority is issued, the Minister may direct the Authority—
  - (a) not to issue the code, or
  - (b) to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In this section “the Minister” means—
  - (a) the Secretary of State, so far as the code relates to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the code relates to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.
- (6) The power under subsection (3) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (7) If the power under subsection (3) is not exercised by the Secretary of State or the Welsh Ministers on the first occasion on which it may be exercised by the Secretary of State or (as the case may be) the Welsh Ministers, it may not be exercised by the Secretary of State or (as the case may be) the Welsh Ministers on a later occasion.

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- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) This section is subject to section 105ZE.

#### Textual Amendments

**F126** Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. [11\(3\)](#), [94\(3\)](#); S.I. 2015/1938, art. [2\(c\)\(ii\)](#); S.I. 2017/462, arts. [3\(e\)\(ii\)](#), [4\(b\)](#)

### 105ZE Codes under section 105ZC: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue a revised code under section 105ZC and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZD does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

#### Textual Amendments

**F126** Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. [11\(3\)](#), [94\(3\)](#); S.I. 2015/1938, art. [2\(c\)\(ii\)](#); S.I. 2017/462, arts. [3\(e\)\(ii\)](#), [4\(b\)](#)

### 105ZF Rules about charges in connection with a section 104 agreement

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a section 104 agreement.
- (2) The rules may in particular make provision about—
  - (a) what types of charge may be imposed;
  - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;

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- (c) principles for determining what types of charge may or may not be imposed;
  - (d) principles for determining the amount of any charge that may be imposed;
  - (e) publication of the charges that may be imposed.
- (3) The rules may require a sewerage undertaker, upon declaring a sewer, drain or sewage disposal works to be vested in the undertaker in accordance with a section 104 agreement, to pay to the other party to the agreement an amount (which may be nil) determined in accordance with the rules.
- (4) Rules made by virtue of subsection (3) may, in particular, provide for the determination to take into account—
- (a) revenue that might be derived from the sewer, drain or sewage disposal works in question;
  - (b) costs that might have been incurred in providing such a sewer, drain or sewage disposal works.
- (5) The rules may also make provision as to—
- (a) the amount of security that may be required by a sewerage undertaker for the purposes of any charges imposed by the sewerage undertaker under a section 104 agreement;
  - (b) the type of security that may be required;
  - (c) the payment of interest on a sum deposited with a sewerage undertaker by way of security.
- (6) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make different provision for different sewerage undertakers or descriptions of undertaker.
- (9) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (10) The Authority must issue revised rules if—
- (a) guidance is issued under section 105ZI, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (11) Revised rules may include provision for applying any of their revisions to section 104 agreements made before the revised rules come into effect.

#### Textual Amendments

**F126** Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. [11\(3\)](#), [94\(3\)](#); S.I. 2015/1938, art. 2(c)(ii); S.I. 2017/462, arts. 3(e)(ii), 4(b)

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### **105ZG Rules under section 105ZF: procedure**

- (1) Before issuing rules under section 105ZF, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any sewerage undertakers or other persons likely to be affected by the rules;
  - (e) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which the relevant persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 105ZI in making rules under section 105ZF.
- (5) Before rules under section 105ZF prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—
  - (a) the Secretary of State, so far as the rules relate to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the rules relate to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 105ZH.

#### **Textual Amendments**

**F126** Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3), 94(3)**; S.I. 2015/1938, art. 2(c)(ii); S.I. 2017/462, arts. 3(e)(ii), 4(b)

### **105ZH Rules under section 105ZF: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 105ZF and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZG does not apply to the proposed revised rules.

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- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
  - (a) that period of 14 days expires, or
  - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
 whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised rules, and
  - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 105ZG.

#### Textual Amendments

**F126** *Ss. 105ZA-105ZI* inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 11(3)**, 94(3); S.I. 2015/1938, art. 2(c)(ii); S.I. 2017/462, arts. 3(e)(ii), 4(b)

#### **105ZI Rules under section 105ZF: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 105ZF.
- (2) Before issuing the guidance, the Minister must—
  - (a) prepare a draft of the proposed guidance;
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.

*Status: Point in time view as at 19/12/2017.*

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- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
- (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the guidance is as to the content of rules relating to section 104 agreements for the vesting of sewers, drains or sewage disposal works in sewerage undertakers whose areas are wholly or mainly in Wales.]

#### Textual Amendments

**F126** Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI, 1.4.2017 for E. for the insertion of s. 105ZD, 1.10.2017 for E. in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), ss. [11\(3\)](#), [94\(3\)](#); S.I. 2015/1938, art. 2(c)(ii); S.I. 2017/462, arts. 3(e)(ii), 4(b)

#### [<sup>F127</sup>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—
  - (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;

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- (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.]

#### Textual Amendments

**F127** Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; [S.I. 2007/1021](#), **art. 2(b)**

#### [<sup>F128</sup>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
  - (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).



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- (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.
- (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.]

#### Textual Amendments

**F128** Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; S.I. 2007/1021, **art. 2(b)**

#### [<sup>F129</sup>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;
  - (aa) [ any sewerage licensee which uses, or removes matter from, the sewerage system of any such sewerage undertaker in accordance with a retail, wholesale or disposal authorisation;]

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- (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.]

#### **Textual Amendments**

**F129** Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; S.I. 2007/1021, **art. 2(b)**

**F130** [S. 105C\(2\)\(aa\)](#) inserted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 93**; S.I. 2017/462, **art. 3(k)(xii)**

### *Communication of drains and private sewers with public sewers*

#### **106 Right to communicate with public sewers.**

<sup>F131</sup>[(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.]

[<sup>F132</sup>(1A) In this section, and in sections 107 to 109, 111, 113 to 116, 118, 119, 124, 127, 139 and 146 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

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- (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
  - <sup>F133</sup>(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.
- <sup>F134</sup>(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 above.]
- (6) Any question arising under subsections <sup>F135</sup>(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) <sup>F136</sup>or (5A)] above,may, on the application of that person, be determined by <sup>F137</sup>the Director under section 30A above]<sup>F138</sup>(and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above).]
- <sup>F139</sup>(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 <sup>F140</sup>the Director] 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 <sup>M9</sup>Factories Act 1961.

#### Textual Amendments

- F131** S. 106(1) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 43\(2\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992, art. 3, Sch. Pt. I](#)
- F132** S. 106(1A) inserted (28.5.2004) by [Water Act 2003 \(c. 37\), ss. 99\(2\), 105\(3\)](#); [S.I. 2004/641, art. 4\(b\)](#) (with [Sch. 3 para. 7](#))
- F133** S. 106(4): paras. (a)(b) substituted (28.5.2004) for words by [Water Act 2003 \(c. 37\), ss. 99\(3\), 105\(3\)](#); [S.I. 2004/641, art. 4\(b\)](#) (with [Sch. 3 para. 7](#))

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- F134** S. 106(5A) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(4)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F135** Words in s. 106(6) substituted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(5)(a)**, 105(3); S.I. 2004/641, **art. 4(b)** (with Sch. 3 para. 7)
- F136** Words in s. 106(6)(b) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(5)(b)**, 105(3); S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)
- F137** Words in s. 106(6) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(8)(a)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II
- F138** Words in s. 106(6) inserted (28.5.2004) by Water Act 2003 (c. 37), **ss. 99(5)(c)**, 105(3); S.I. 2004/641, **art. 4** (with Sch. 3 para. 7)
- F139** S. 106(7) repealed (1.7.1992) and is expressed to cease to have effect (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **ss. 35(8)(b)**, 56(7), **Sch. 2**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, arts. 3, 4, Sch. Pts. I, II
- F140** Words in s. 106(8)(b) substituted (1.9.1992) by Competition and Service (Utilities) Act 1992 (c. 43), **s. 35(8)(c)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

#### **Modifications etc. (not altering text)**

- C6** S. 106 applied (23.8.2007) by The Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), **art. 15(2)** (with savings in arts. 3(6), 12(3))
- C7** S. 106 applied (14.9.2006) by The Borough of Poole (Poole Harbour Opening Bridges) Order 2006 (S.I. 2006/2310), **art. 14(2)(4)**
- C8** S. 106 applied (3.7.2006) by The Port of Blyth (Battleship Wharf Railway) Order 2006 (S.I. 2006/1518), **art. 10(2)**
- C9** S. 106 applied (25.11.2005) by The Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), **art. 19(2)**
- C10** S. 106 applied (7.8.2012) by The Ipswich Barrier Order 2012 (S.I. 2012/1867), arts. 1, **13(2)** (with arts. 46-48, Sch. 8 para. 18)
- C11** S. 106 applied (26.9.2012) by The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284), arts. 1, **13(2)** (with art. 26(2))
- C12** S. 106 applied (6.11.2012) by The Network Rail (North Doncaster Chord) Order 2012 (S.I. 2012/2635), arts. 1, **20(2)** (with art. 35(2))
- C13** S. 106 applied (13.11.2012) by The Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012/2679), arts. 1, **19(2)** (with art. 42(2))
- C14** S. 106 modified (9.4.2013) by The Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 (S.I. 2013/675), arts. 1, **16(2)**
- C15** S. 106 applied (9.4.2013) by The Hinkley Point C (Nuclear Generating Station) Order 2013 (S.I. 2013/648), arts. 1, **21(2)** (with arts. 48, 68, 79)
- C16** S. 106 applied (15.8.2013) by The North Blyth Biomass Power Station Order 2013 (S.I. 2013/1873), arts. 1, **11(2)** (with art. 30)
- C17** S. 106 applied (22.8.2013) by The Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013/1933), arts. 1, **13(2)**
- C18** S. 106 applied (6.11.2013) by The Transport for Greater Manchester (Light Rapid Transit System) (Second City Crossing) Order 2013 (S.I. 2013/2587), arts. 1, **20(2)** (with arts. 20(7), 42, 43)
- C19** S. 106 applied (9.1.2014) by The National Grid (King's Lynn B Power Station Connection) Order 2013 (S.I. 2013/3200), arts. 1, **14(2)** (with art. 14(7))
- C20** S. 106 applied (21.4.2014) by The Network Rail (Norton Bridge Area Improvements) Order 2014 (S.I. 2014/909), arts. 1, **18(2)** (with art. 34(2))
- C21** S. 106 applied (7.5.2014) by The National Grid (North London Reinforcement Project) Order 2014 (S.I. 2014/1052), arts. 1, **17(2)**
- C22** S. 106 applied (7.7.2014) by The East Anglia ONE Offshore Wind Farm Order 2014 (S.I. 2014/1599), arts. 1, **13(2)** (with arts. 37, 38, Sch. 9 para. 19)

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- C23 S. 106 applied (24.7.2014) by The Daventry International Rail Freight Interchange Alteration Order 2014 (S.I. 2014/1796), arts. 1, **17(2)** (with arts. 17(7), 24(2), Sch. 6 para. 3)
- C24 S. 106 applied (6.8.2014) by The Rampion Offshore Wind Farm Order 2014 (S.I. 2014/1873), arts. 1, **20(2)** (with arts. 12, 13, 20(7), Sch. 12 Pt. 1 para. 19, Sch. 12 Pt. 2 para. 6, Sch. 12 Pt. 3 para. 5, Sch. 12 Pt. 4 para. 4, Sch. 12 Pt. 5 para. 4)
- C25 S. 106 applied (18.9.2014) by The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 (S.I. 2014/2269), arts. 1, **15(2)**
- C26 S. 106 applied (24.9.2014) by The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (S.I. 2014/2384), arts. 1, **19(2)**
- C27 S. 106 applied (2.10.2014) by The Clocaenog Forest Wind Farm Order 2014 (S.I. 2014/2441), arts. 1, **18(2)** (with art. 33)
- C28 S. 106 applied (2.10.2014) by The North Killingholme (Generating Station) Order 2014 (S.I. 2014/2434), arts. 1, **14(2)** (with arts. 6, 13, 14(7), Sch. 8 Pt. 1 para. 6, Sch. 8 Pt. 3 paras. 4(3), 6, 17, Sch. 8 Pt. 5 para. 9)
- C29 S. 106 applied (21.10.2014) by The Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 (S.I. 2014/2637), arts. 1, **16(2)**
- C30 S. 106 applied (23.10.2014) by The South Hook Combined Heat and Power Plant Order 2014 (S.I. 2014/2846), arts. 1, **10(2)**
- C31 S. 106 modified (29.10.2014) by The Able Marine Energy Park Development Consent Order 2014 (S.I. 2014/2935), **art. 20(2)** (with arts. 30(4), 53)
- C32 S. 106 applied (28.11.2014) by The Walney Extension Offshore Wind Farm Order 2014 (S.I. 2014/2950), arts. 1, **15(2)** (with arts. 38, 39)
- C33 S. 106 applied (15.12.2014) by The London Underground (Northern Line Extension) Order 2014 (S.I. 2014/3102), arts. 1, **16(2)** (with Sch. 8 para. 45)
- C34 S. 106 applied (31.12.2014) by The Hornsea One Offshore Wind Farm Order 2014 (S.I. 2014/3331), arts. 1, **12(2)** (with arts. 37, 38)
- C35 S. 106 applied (7.1.2015) by The Willington C Gas Pipeline Order 2014 (S.I. 2014/3328), arts. 1, **14(2)**
- C36 S. 106 applied (2.2.2015) by The Northumberland County Council (A1 – South East Northumberland Link Road (Morpeth Northern Bypass)) Development Consent Order 2015 (S.I. 2015/23), arts. 1, **18(2)** (with art. 18(7))
- C37 S. 106 applied (25.2.2015) by The A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 (S.I. 2015/129), arts. 1, **16(2)**
- C38 S. 106 applied (11.3.2015) by The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (S.I. 2015/318), arts. 1, **17(2)** (with art. 17(7)(9), 40, 41, Sch. 12 Pt. 1 paras. 4, 9(2), 10, Sch. 12 Pt. 2 paras. 4(2)(3), 19, Sch. 12 Pt. 4 paras. 3, 4, 16)
- C39 S. 106 applied (1.4.2015) by The Knottingley Power Plant Order 2015 (S.I. 2015/680), arts. 1, **15(2)** (with art. 15(7), Sch. 8 para. 10)
- C40 S. 106 applied (21.4.2015) by The Network Rail (Ordsall Chord) Order 2015 (S.I. 2015/780), arts. 1, **17(2)** (with arts. 17(2), 36(2))
- C41 S. 106 applied (9.6.2015) by The White Moss Landfill Order 2015 (S.I. 2015/1317), arts. 1, **9(2)** (with art. 5)
- C42 S. 106 applied (23.6.2015) by The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 (S.I. 2015/1347), arts. 1, **17(2)**
- C43 S. 106 applied (30.6.2015) by The Swansea Bay Tidal Generating Station Order 2015 (S.I. 2015/1386), arts. 1, **13(2)** (with arts. 51, 53)
- C44 S. 106 applied (7.8.2015) by The Preesall Underground Gas Storage Facility Order 2015 (S.I. 2015/1561), arts. 1, **15(2)** (with art. 44)
- C45 S. 106 applied (14.8.2015) by The Progress Power (Gas Fired Power Station) Order 2015 (S.I. 2015/1570), arts. 1, **15(2)**
- C46 S. 106 applied (14.8.2015) by The Hirwaun Generating Station Order 2015 (S.I. 2015/1574), arts. 1, **14(2)**
- C47 S. 106 applied (26.8.2015) by The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (S.I. 2015/1592), arts. 1, **18(2)** (with arts. 40, 41)

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- C48 S. 106 applied (19.11.2015) by The Ferrybridge Multifuel 2 Power Station Order 2015 (S.I. 2015/1832), arts. 1(2), **12(2)**
- C49 S. 106 applied (16.12.2015) by The Network Rail (Tinsley Chord) Order 2015 (S.I. 2015/1876), arts. 1, **8(2)**
- C50 S. 106 modified (30.12.2015) by The Port Talbot Steelworks Generating Station Order 2015 (S.I. 2015/1984), arts. 1, **10(2)** (with art. 26)
- C51 S. 106 applied (2.2.2016) by The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (S.I. 2016/17), arts. 1, **22(2)**
- C52 S. 106 applied (9.2.2016) by The National Grid (Hinkley Point C Connection Project) Order 2016 (S.I. 2016/49), arts. 1, **16(2)** (with art. 16(7)(8), 32)
- C53 S. 106 applied (18.2.2016) by The A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 (S.I. 2016/73), arts. 1, **15(2)** (with art. 37)
- C54 S. 106 applied (25.3.2016) by The Thorpe Marsh Gas Pipeline Order 2016 (S.I. 2016/297), arts. 1, **17(2)** (with art. 39)
- C55 S. 106 applied (1.6.2016) by The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (S.I. 2016/547), arts. 1, **17(2)** (with arts. 4, 5(3), 17(6))
- C56 S. 106 applied (14.6.2016) by The Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016 (S.I. 2016/545), arts. 1, **15(2)** (with art. 39)
- C57 S. 106 applied (2.8.2016) by The Meaford Gas Fired Generating Station Order 2016 (S.I. 2016/779), arts. 1, **16(2)**
- C58 S. 106 applied (2.8.2016) by The Midland Metro (Wolverhampton City Centre Extension) Order 2016 (S.I. 2016/684), arts. 1, **20(2)** (with arts. 46, 47, Sch. 9 para. 4, Sch. 10 para. 12(2))
- C59 S. 106 applied (10.8.2016) by The York Potash Harbour Facilities Order 2016 (S.I. 2016/772), arts. 1, **14(2)** (with arts. 14(7), 35, 36)
- C60 S. 106 applied (19.8.2016) by The North Wales Wind Farms Connection Order 2016 (S.I. 2016/818), arts. 1, **16(2)** (with art. 35)
- C61 S. 106 applied (7.9.2016) by The Hornsea Two Offshore Wind Farm Order 2016 (S.I. 2016/844), arts. 1(2), **15(2)** (with arts. 37, 38)
- C62 S. 106 applied (15.9.2016) by The River Humber Gas Pipeline Replacement Order 2016 (S.I. 2016/853), arts. 1, **18(2)** (with art. 43)
- C63 S. 106 applied (23.9.2016) by The M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016 (S.I. 2016/863), arts. 1, **17(2)**
- C64 S. 106 applied (27.9.2016) by The Triton Knoll Electrical System Order 2016 (S.I. 2016/880), arts. 1(2), **12(2)** (with arts. 39, 40, Sch. 8 para. 19)
- C65 S. 106 applied (28.10.2016) by The Brechfa Forest Wind Farm Connection Order 2016 (S.I. 2016/987), arts. 1, **15(2)** (with arts. 15(7), 37)
- C66 S. 106 applied (24.11.2016) by The Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016 (S.I. 2016/1035), arts. 1, **21(2)** (with arts. 21(7), 43, 44)
- C67 S. 106 applied (18.3.2017) by The North London Heat and Power Generating Station Order 2017 (S.I. 2017/215), arts. 1, **16(6)**
- C68 S. 106 applied (29.3.2017) by The Glyn Rhonwy Pumped Storage Generating Station Order 2017 (S.I. 2017/330), arts. 1, **17(2)** (with art. 31)
- C69 S. 106 applied (5.4.2017) by The Keuper Underground Gas Storage Facility Order 2017 (S.I. 2017/433), arts. 1, **16(2)**
- C70 S. 106 applied (8.8.2017) by The Wrexham Gas Fired Generating Station Order 2017 (S.I. 2017/766), arts. 1, **15(2)**
- C71 S. 106 applied (24.8.2017) by The National Grid (Richborough Connection Project) Development Consent Order 2017 (S.I. 2017/817), arts. 1, **16(2)** (with arts. 16(7), 22)
- C72 S. 106 applied (29.8.2017) by The East Anglia THREE Offshore Wind Farm Order 2017 (S.I. 2017/826), arts. 1, **13(2)** (with arts. 5(9), 36, 37, Sch. 8 para. 34)
- C73 S. 106 applied (5.9.2017) by The London Overground (Barking Riverside Extension) Order 2017 (S.I. 2017/830), arts. 1, **14(2)** (with art. 14(7), Sch. 8 para. 20)

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- C74** S. 106 applied (19.12.2017) by [The Network Rail \(Buxton Sidings Extension\) Order 2017 \(S.I. 2017/1150\)](#), arts. 1, **15(2)** (with art. 32(2))
- C75** S. 106(8) restricted (18.12.1996) by 1996 c. 61, s. 38, **Sch. 10 para. 13**
- C76** S. 106(8) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), s. 40, **Sch. 14 para. 16**
- C77** S. 106(8) excluded (24.9.2014) by [The Thames Water Utilities Limited \(Thames Tideway Tunnel\) Order 2014 \(S.I. 2014/2384\)](#), art. 1, **Sch. 19 Pt. 1 para. 5**
- C78** S. 106(8) excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 21 para. 7**

#### Marginal Citations

- M9** 1961 c. 34.

### [<sup>F141</sup>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 occurrence 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
  - (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.]

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### Textual Amendments

**F141** S. 106B inserted (1.10.2010 for specified purposes, 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), [ss. 42\(1\), 49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); [S.I. 2010/2169](#), [art. 4](#); [S.I. 2012/2048](#), [art. 2](#) (with [art. 3](#))

## 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 [<sup>F142</sup>the Director], within fourteen days after the determination of that question, give notice to that person that the undertaker intends itself to make the communication.
- [<sup>F143</sup>(1A) A sewerage undertaker may not give notice to a person under subsection (1) if—
- (a) the undertaker and the person entered into an agreement under section 104, and
  - (b) the agreement provides for the communication to which the person's proposal relates to be made by the person.]
- (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 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.
- [<sup>F144</sup>(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



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- (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 Director for determination under section 30A above by either party to the dispute.]
- (5) Sections 291, 293 and 294 of the <sup>M10</sup>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.
- [<sup>F145</sup>(7) A reference in this section to an agreement under section 104 includes a reference to—
- (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
  - (b) an agreement which has been varied by order under section 105ZB(1).]

#### Textual Amendments

- F142** Words in s. 107(1)(b) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(9\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II
- F143** [S. 107\(1A\)](#) inserted (1.10.2017 for E.) by [Water Act 2014 \(c. 21\), ss. 11\(4\), 94\(3\)](#); S.I. 2017/462, art. 4(b)
- F144** [S. 107\(4A\)](#) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(9\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II
- F145** [S. 107\(7\)](#) inserted (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 95](#); S.I. 2017/462, art. 4(d)(iii) (as substituted by S.I. 2017/926, art. 2(2))

#### Marginal Citations

- M10** 1936 c. 49.

### 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 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,

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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.

## 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 <sup>M11</sup>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.

### Marginal Citations

M11 1936 c. 49.

## *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 <sup>M12</sup>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 Director.
- (2) A determination by the Director 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 Director on the application of either of those undertakers, as well as by agreement between the undertakers.

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- (3) In making a determination under this section, the Director 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.

#### Marginal Citations

M12 1989 c. 15.

### <sup>F146</sup>110 Main connections

- (1) This section applies where—
- a qualifying person requests a sewerage undertaker to permit a main connection into the established undertaker's sewerage system for the benefit of the qualifying person, or
  - a sewerage undertaker proposes such an arrangement;
- and references in this section to the established undertaker are references to the sewerage undertaker who is to permit the main connection.
- (2) In this section “qualifying person” means—
- a sewerage undertaker, or
  - a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the established undertaker, the Authority may—
- if it appears to the Authority that it is necessary or expedient for the purposes of this Part that the established undertaker should permit a main connection into its sewerage system, and
  - if the Authority is satisfied that the established undertaker and qualifying person cannot reach agreement,
- by order require the established undertaker to permit the connection for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency.
- (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the established undertaker and the qualifying person.
- (6) If the Authority makes an order under subsection (3) on the application of a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
- the person becomes a sewerage undertaker for the area specified in the order, or
  - the person becomes a sewerage undertaker for an area that includes the area specified in the order (in the case of a sewerage undertaker applying for a variation).

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- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement with a sewerage undertaker for it to permit a main connection into its sewerage system for the benefit of a qualifying person, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with such agreement as is mentioned in subsection (7), and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In exercising its functions under this section, the Authority must have regard to the desirability of—
- (a) facilitating effective competition within the sewerage services industry;
  - (b) the established 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 established 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 established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (10) In this section and section 110B “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 110B(1) which would result in, or which would vary or terminate, a main connection agreement, means—
- (a) the Environment Agency, in a case where all parties to the main connection agreement are or would be—
    - (i) a sewerage undertaker whose area is wholly in England, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
  - (b) the NRBW, in a case where all parties to the main connection agreement are or would be—
    - (i) a sewerage undertaker whose area is wholly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
  - (c) both the Environment Agency and the NRBW, in any other case.
- (11) In this section and sections 110B to 110J—
- “main connection” means—
- (a) a connection 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;

*Status: Point in time view as at 19/12/2017.*

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“main connection agreement” means an agreement with one or more sewerage undertakers for that undertaker or each of them to permit a main connection into its sewerage system and includes—

- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
- (b) any agreement which has been varied by order under section 110B(1).]

#### Textual Amendments

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by Water Act 2014 (c. 21), ss. 9(1), 94(3) (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i)

#### [<sup>F146</sup>110B] Variation and termination of main connection agreements

- (1) On the application of any party to a main connection agreement, the Authority may—
  - (a) if it appears to the Authority that it is necessary or expedient for the purpose of this Part that the main connection agreement should be varied or terminated, and
  - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement,by order vary or terminate the main connection agreement.
- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency.
- (3) If an order under subsection (1) is made in relation to a main connection agreement, the agreement—
  - (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect (as the case may be).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a main connection agreement, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (6) Subsection (5)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement to vary or terminate a main connection agreement, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the established undertaker in complying with its obligations under the main connection agreement in question and to the desirability of—
  - (a) facilitating effective competition within the sewerage services industry;

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- (b) the established 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 established 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 established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (8) In this section and sections 110C to 110J “established undertaker”, in relation to a sewerage agreement, means the sewerage undertaker which is required by the agreement to permit a main connection into its sewerage system.

#### Textual Amendments

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\), ss. 9\(1\), 94\(3\)](#) (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i)

### 110C Codes in respect of main connection agreements

- (1) The Authority may issue one or more codes in respect of main connection agreements.
- (2) A code may make provision about—
  - (a) procedures in connection with making an agreement to permit a main connection into a sewerage undertaker's sewerage system;
  - (b) procedures in connection with varying or terminating a main connection agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 110A(3) or 110B(1);
  - (d) the terms and conditions of a main connection agreement, including terms as to the duration of such an agreement;
  - (e) principles for determining the terms and conditions that should or should not be incorporated into a main connection agreement;
  - (f) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) If the Authority considers that a sewerage undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) The Authority may not give a direction under subsection (3) requiring a person to enter into, vary or terminate an agreement.
- (5) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (6) A code may make different provision for different persons or different descriptions of person.
- (7) The Authority may from time to time revise a code issued under this section and issue a revised code.

*Status: Point in time view as at 19/12/2017.*

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- (8) A revised code may include provision for applying any of its revisions to main connection agreements made before the revised code comes into force.

#### Textual Amendments

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\)](#), **ss. 9(1), 94(3)** (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i)

### 110D Codes under section 110C: procedure

- (1) Before issuing a code under section 110C, the Authority must—
- prepare a draft of the proposed code under section 110C, and
  - consult such persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (3) Before a code under section 110C prepared by the Authority is issued, the Minister may direct the Authority—
- not to issue the code, or
  - to issue the code with specified modifications.
- (4) Subsection (3) is subject to subsections (6) and (7).
- (5) In subsection (3) “the Minister” means—
- the Secretary of State, so far as a code prepared by the Authority relates to main connection agreements under which—
    - the main connection into a sewerage system, or
    - each such connection,is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
  - the Welsh Ministers, so far as a code prepared by the Authority relates to main connection agreements under which—
    - the main connection into a sewerage system, or
    - each such connection,is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
  - the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to main connection agreements under which one main connection into a sewerage system is or would be—
    - a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
    - a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.

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- (6) If the power under subsection (3) is exercised to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such main connection agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such main connection agreements as are referred to in that paragraph on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.

#### Textual Amendments

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\)](#), [ss. 9\(1\), 94\(3\)](#) (with [s. 9\(2\)\(3\)](#)); [S.I. 2016/1007](#), [art. 2\(c\)\(i\)](#)

#### 110E Codes under section 110C: minor or urgent revisions

- (1) This section applies if the Authority propose to issue a revised code under section 110C and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 110D does not apply to the revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

#### Textual Amendments

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\)](#), [ss. 9\(1\), 94\(3\)](#) (with [s. 9\(2\)\(3\)](#)); [S.I. 2016/1007](#), [art. 2\(c\)\(i\)](#)



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## **110F Rules about charges for permitting main connections**

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a main connection agreement.
- (2) The rules may in particular make provision about—
  - (a) what types of charge may be imposed;
  - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
  - (c) principles for determining what types of charge may or may not be imposed;
  - (d) principles for determining the amount of any charge that may be imposed;
  - (e) publication of the charges that may be imposed.
- (3) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—
  - (a) make different provision for different sewerage undertakers or different descriptions of sewerage undertaker;
  - (b) make different provision for different purposes;
  - (c) make provision subject to exceptions.
- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (7) The Authority must issue revised rules if—
  - (a) guidance is issued under section 110J, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (8) Revised rules may include provision for applying any of the revisions to main connection agreements made before the revised rules come into effect.

### **Textual Amendments**

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\)](#), [ss. 9\(1\), 94\(3\)](#) (with [s. 9\(2\)\(3\)](#)); [S.I. 2016/1007](#), [art. 2\(c\)\(i\)](#)

## **110G Rules under section 110F: provision about the reduction of charges**

- (1) Rules under section 110F may provide for the reduction of charges payable under a main connection agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
  - (a) specify conditions by reference to any party to a main connection agreement;
  - (b) require that steps be taken for the purpose of reducing the cost to a sewerage undertaker of permitting a main connection into its sewerage system;
  - (c) specify conditions about reducing charges payable by a person who—

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- (i) is not party to the agreement, and
  - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition falling within paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the sewerage undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
- (a) make provision as to the content of the notice;
  - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
- (a) the provision of the rules that brings about the reduction in the charge;
  - (b) the amount of the charge, with and without the reduction;
  - (c) the period for which the reduction has effect.

#### **Textual Amendments**

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\), ss. 9\(1\), 94\(3\)](#) (with s. 9(2)(3)); [S.I. 2016/1007, art. 2\(c\)\(i\)](#)

#### **110H Rules under section 110F: procedure**

- (1) Before issuing rules under section 110F, the Authority must—
- (a) prepare a draft of the proposed rules, and
  - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 110J in making rules under section 110F.
- (4) Before rules under section 110F prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
- (a) the Secretary of State, so far as rules prepared by the Authority relate to main connection agreements under which—
    - (i) the main connection into a sewerage system, or
    - (ii) each such connection,
 is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
  - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to main connection agreements under which—
    - (i) the main connection into a sewerage system, or
    - (ii) each such connection,

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- is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;
- (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
  - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.
- (6) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (7) This section is subject to section 110I.

#### Textual Amendments

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\)](#), [ss. 9\(1\), 94\(3\)](#) (with [s. 9\(2\)\(3\)](#)); [S.I. 2016/1007](#), [art. 2\(c\)\(i\)](#)

#### 110I Rules under section 110F: minor or urgent revisions

- (1) This section applies if the Authority proposes to issue revised rules under section 110F and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 110H does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
- (a) that period of 14 days expires, or
  - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
- whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
- (a) the issuing of the revised rules, and

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- (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 110H.

#### Textual Amendments

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\), ss. 9\(1\), 94\(3\)](#) (with s. 9(2)(3)); S.I. 2016/1007, art. 2(c)(i)

#### **110J Rules under section 110F: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 110F.
- (2) Before issuing the guidance, the Minister must—
  - (a) prepare a draft of the proposed guidance;
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Welsh Ministers;
  - (b) the Secretary of State;
  - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to main connection agreements under which—
    - (i) any main connection into a sewerage system, or
    - (ii) each such connection,
 is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
  - (b) the Welsh Ministers, in relation to main connection agreements under which—
    - (i) any main connection into a sewerage system, or
    - (ii) each such connection,
 is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;

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- (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
  - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.]

#### Textual Amendments

**F146** Ss. 110A-110J substituted for s. 110A (1.11.2016 for the substitution of ss. 110A, 110B, 110J) by [Water Act 2014 \(c. 21\)](#), **ss. 9(1), 94(3)** (with s. 9(2)(3)); [S.I. 2016/1007](#), art. 2(c)(i)

*[<sup>F147</sup> Provision of sewerage services by sewerage licensees etc*

#### Textual Amendments

**F147** Ss. 110K-110O and cross-heading inserted (6.3.2017 for the insertion of s. 110K, 1.4.2017 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 32, 94(3)**; [S.I. 2017/58](#), art. 2(a) (with art. 3(2)); [S.I. 2017/462](#), art. 3(g)

### 110K Provision by sewerage licensee

- (1) The owner or occupier of any premises may serve a notice on a sewerage undertaker—
- (a) informing the undertaker that sewerage services to the premises are to be provided by a sewerage licensee, and
  - (b) specifying the time after which the undertaker will no longer be required to provide sewerage services to the premises.
- (2) Where the charges for the sewerage services provided 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 is to fall at least two working days after the notice is served.
- (3) In this section a reference to two working days is a reference to a period of 48 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.

### 110L Interim duty: sewerage undertakers and sewerage licensees

- (1) This section applies where—
- (a) a sewerage licensee (“the previous licensee”) ceases to provide sewerage services to any premises, and
  - (b) the owner or occupier of the premises has not notified the sewerage undertaker in whose area the premises are that—

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- (i) he has made arrangements for the continuation of the provision of sewerage services to the premises, or
  - (ii) he intends any provision of sewerage services to the premises to cease.
- (2) It is to be the duty of the sewerage undertaker to continue to provide the sewerage services to the premises which were provided by the previous licensee.
- (3) But the Authority may give a direction to an eligible sewerage licensee (an “interim licensee”) providing that it is to be the duty of that licensee to provide the sewerage services instead.
- [ Where the premises are in a retail exit area the Authority must give a direction under <sup>F148</sup>(3A) subsection (3).]
- (4) An “eligible sewerage licensee” is a sewerage licensee with a retail authorisation who has elected to be an eligible sewerage licensee for the purposes of this section in accordance with the code issued under section 110O.
- (5) If the Authority proposes to give a direction under subsection (3) to an eligible sewerage licensee—
- (a) the Authority must give notice of the proposed direction to the licensee, and
  - (b) the licensee may, in accordance with the code issued under section 110O, temporarily suspend the election made by the licensee as mentioned in subsection (4), so that the proposed direction cannot be given to the licensee.
- (6) Where sewerage services are provided by an undertaker under subsection (2)—
- (a) the charges payable in respect of the provision of the services are to be fixed from time to time by a charges scheme under section 143, and
  - (b) the services are to be provided until—
    - (i) services are provided by an interim licensee by virtue of a direction under subsection (3),
    - (ii) services are provided by a sewerage licensee following the service of a notice under section 110K, or
    - (iii) services are provided to the premises by another sewerage undertaker following the service of a notice by the owner or occupier of the premises on the undertaker providing services under subsection (2) specifying the time after which the undertaker will no longer be required to provide sewerage services to the premises (see section 110M(5)),
 whichever is the earlier.
- (7) Where sewerage services are provided by an interim licensee by virtue of a direction given under subsection (3)—
- (a) the provision of services by the interim licensee is to be treated as having begun on the date on which the previous licensee ceased to provide services to the premises,
  - (b) the terms and conditions in accordance with which the services are to be provided are to be—
    - (i) those provided for by a scheme made under section 110N, or
    - (ii) such other terms and conditions as may be agreed between the interim licensee and the owner or occupier of the premises, and
  - (c) the services are to be provided until they are discontinued in accordance with the terms and conditions mentioned in paragraph (b).

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- (8) Subsections (9) and (10) apply if, within a period of three months beginning with the date on which the previous licensee ceased to provide sewerage services to the premises, the owner or occupier of the premises serves notice—
- (a) under section 110K, on the sewerage undertaker continuing the provision of services under subsection (2), or
  - (b) in accordance with the terms and conditions mentioned in subsection (7)(b), on the interim licensee continuing the provision of services by virtue of a direction given under subsection (3),
- that instead another sewerage licensee (“the new licensee”) is to continue the provision of the services to the premises which were provided by the previous licensee.
- (9) The notice must—
- (a) specify the time from which the new licensee is to continue the provision of the services in question, and
  - (b) be served in accordance with the code issued under section 110O.
- (10) In the case of a notice served as mentioned in subsection (8)(a), the provision of services by the new licensee is to be treated as having begun on the date on which the previous licensee ceased to provide services to the premises.

#### **Textual Amendments**

**F148** S. 110L(3A) inserted (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), reg. 1(2), **Sch. 2 para. 8**

#### **110M Interim duty: supplementary**

- (1) Where a duty is imposed by section 110L(2), or by virtue of a direction given under section 110L(3), in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage is actionable at the suit of that owner or occupier.
- (2) But in any proceedings brought against a sewerage undertaker or sewerage licensee in pursuance of subsection (1), it is a defence for the undertaker or licensee to show that the undertaker or, as the case may be, the licensee took all reasonable steps and exercised all due diligence to avoid the breach.
- (3) For the purposes of section 110L, premises which are outside a sewerage undertaker's area are to be treated as being within that area if they are provided with sewerage services using the undertaker's sewerage system.
- (4) In subsection (3), the reference to the undertaker's sewerage system is to be construed in accordance with section 17BA(7).
- (5) Section 110K(2) and (3) apply to a notice served under section 110L(6)(b)(iii) as they apply to a notice served under section 110K.

#### **110N Interim licensees: schemes for terms and conditions**

- (1) A person who is an eligible sewerage licensee for the purposes of section 110L must make, and from time to time revise, a scheme containing the terms and conditions

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- which, in the absence of agreed terms and conditions, are to apply to the provision of sewerage services by the licensee by virtue of a direction given under section 110L(3).
- (2) A scheme under this section may make different provision for different purposes, or for different areas.
  - (3) As soon as practicable after a sewerage licensee makes or revises a scheme under this section the licensee is to—
    - (a) publish the scheme, or revised scheme, on the licensee's website, and
    - (b) send a copy of the scheme, or revised scheme, to the Authority.
  - (4) The Authority may give a direction that terms and conditions applying to the provision of sewerage services in accordance with a scheme under this section must be modified as specified in the direction.
  - (5) A direction under subsection (4) may apply—
    - (a) generally to terms and conditions applying in accordance with a scheme under this section, or
    - (b) to terms and conditions so applying in any particular case.
  - (6) It is the duty of a sewerage licensee to comply with a direction under subsection (4), and this duty is enforceable under section 18.

#### **110O Interim duty: code**

- (1) The Authority must issue a code in relation to—
  - (a) the provision of sewerage services under section 110L, and
  - (b) its power of direction under section 110L(3) (power to direct that eligible sewerage licensee provides interim sewerage services).
- (2) The code may, in particular, make provision about—
  - (a) the procedure for electing to be an eligible sewerage licensee for the purposes of section 110L;
  - (b) the procedure for temporarily suspending such an election under section 110L(5)(b);
  - (c) the circumstances in which the Authority's power of direction under section 110L(3) or 110N(4) may or may not be exercised;
  - (d) how the Authority will determine the date on which a sewerage licensee ceased to provide sewerage services to premises for the purposes of section 110L;
  - (e) terms and conditions contained in schemes made under section 110N;
  - (f) eligible sewerage licensees informing owners or occupiers of premises of their schemes for terms and conditions made under section 110N, before agreeing any terms and conditions as mentioned in section 110L(7)(b)(ii);
  - (g) the giving of notices as mentioned in section 110L(8) (that a new licensee is to continue the provision of the sewerage services provided by the previous licensee) including, in particular, provision about—
    - (i) the earliest time that a notice may specify as the time from which a new licensee is to continue the provision of the sewerage services provided by a previous licensee;
    - (ii) the procedure for serving a notice.



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- (3) If the Authority considers that a sewerage licensee is not acting as required by provision contained in the code as mentioned in subsection (2)(e) or (f), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a sewerage licensee to comply with a direction under subsection (3), and this duty is enforceable under section 18.
- (5) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (6) References in section 110L to the code issued under this section are to the code issued under this section that has effect at the time in question.]

#### *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 [<sup>F149</sup>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 <sup>M13</sup>Petroleum (Consolidation) Act 1928, gives off an inflammable vapour at a temperature of less than [<sup>F150</sup>twenty-three degrees Celsius] .

#### Textual Amendments

**F149** Words in s. 111(1)(b) substituted (1.4.2007) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 39\(2\)\(a\); S.I. 2007/1021, art. 2\(d\)](#)

**F150** Words in s. 111(5) substituted (1.4.2007) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 39\(2\)\(b\); S.I. 2007/1021, art. 2\(d\)](#)

#### Modifications etc. (not altering text)

**C79** S. 111 amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. I para. 8](#) (with ss. 42, 46).

**C80** S. 111 modified by [S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9](#) (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\), reg. 1\(b\), Sch. 1](#))

**C81** S. 111 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\), reg. 1\(1\), Sch. 23 paras. 1\(3\), 2 Table 9](#) (with regs. 1(3), 77-79, Sch. 4)

#### Marginal Citations

**M13** [1928 c. 32.](#)

## 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 [<sup>F151</sup>Director].
- (3) On an appeal under subsection (2) above with respect to any requirements, the [<sup>F151</sup>Director] 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 under this section to comply with those requirements.

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- (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.
- [<sup>F152</sup>(8) A requirement imposed under this section may not be inconsistent with, or more onerous than, standards published for the purposes of section 106B.]

#### Textual Amendments

**F151** Word in s. 112(2)(3) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(10\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

**F152** S. 112(8) added (1.10.2010 for specified purposes; 1.10.2012 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\), ss. 42\(4\), 49\(3\)](#) (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.; S.I. 2012/2048, art. 2 (with art. 3)

#### Modifications etc. (not altering text)

**C82** S. 112 excluded (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), regs. 1(1)(b), 6(7) (with reg. 1(1)(c))

### 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 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—

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- (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 <sup>F153</sup>notice of its proposals to the owner of the premises in question.]]<sup>F153</sup> notice of its proposals to—
- (a) the owner of the premises in question, and
  - (b) any sewerage licensee providing sewerage services to those premises.]
- (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 <sup>F154</sup>refer the matter to the Director for determination under section 30A above].
- <sup>F155</sup>(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.

#### Textual Amendments

- F153** Words in s. 113(3) substituted (1.10.2017 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 96](#); S.I. 2017/462, art. 4(d)(iii) (as substituted by S.I. 2017/926, art. 2(2))
- F154** Words in s. 113(4) substituted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(11\)\(a\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II
- F155** S. 113(5) repealed (1.7.1992) and is expressed to cease to have effect (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), ss. 35\(11\)\(b\), 56\(7\), Sch. 2](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, arts. 3, 4, Sch. Pts. I, II

#### Modifications etc. (not altering text)

- C83** S. 113(6) amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. I para. 8](#) (with ss. 42, 46).
- C84** S. 113(6) modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\), reg. 1\(b\), Sch. 1](#))
- C85** S. 113(6) modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\), reg. 1\(1\), Sch. 23 paras. 1\(3\), 2 Table 9](#) (with regs. 1(3), 77-79, Sch. 4)

### 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,

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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.

### *f<sup>F156</sup>Sustainable drainage*

#### **Textual Amendments**

**F156** S. 114A and cross-heading inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 21(1)**, 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).
- (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).]

### *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.

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- (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 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 <sup>M14</sup>Highways Act 1980.
- (8) Part XII of the <sup>M15</sup>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.

#### **Marginal Citations**

**M14** 1980 c. 66.

**M15** 1936 c. 49.

## **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—

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- (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.

<sup>F157</sup> [(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 Director for determination under section 30A above by either party to the dispute.]

#### Textual Amendments

**F157** S. 116(4) inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 35\(12\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt. II

#### <sup>F158</sup> [Complaints

#### Textual Amendments

**F158** S. 116A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 c. 43, s.33](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I

#### <sup>F159</sup> 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 [<sup>F160</sup>regional committee] to which it has been allocated; and
  - (b) the proposed procedure or modification has been approved by the Director.
- (3) The sewerage undertaker shall—
  - (a) publicise the procedure in such manner as may be approved by the Director; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Director 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 Director.
- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the sewerage undertaker, direct the undertaker to make such modifications of—
  - (a) the procedure; or

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- (b) the manner in which the procedure operates, 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 Director under section 18 above.
- (9) Where the Director is considering whether to exercise his powers under subsection (4) or (6) above in relation to a sewerage undertaker, it shall be the duty of that undertaker to give him such information as he may reasonably require for the purpose of assisting him in coming to a decision.
- (10) Section 202 below shall have effect, with the necessary modifications, in relation to information which the Director 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.]

#### Textual Amendments

**F159** S. 116A inserted (1.7.1992) by Competition and Service (Utilities) Act 1992 (c. 43), s.33; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I

**F160** Words in s. 116A(2)(a) substituted (1.10.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), Sch. 7 para. 27(3); S.I. 2005/2714, art. 2(1)(v)(aa) (with Sch. para. 8)

### *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 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.



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- (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 <sup>M16</sup>Water Resources Act 1991 or [<sup>F161</sup>the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)]; 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.

#### Textual Amendments

**F161** Words in s. 117(5)(a) substituted (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 29 para. 8(2)** (with regs. 1(3), 77-79, Sch. 4)

#### Marginal Citations

**M16** 1991 c. 57.

## [<sup>F162</sup>CHAPTER 2A

### DUTIES RELATING TO SEWERAGE SERVICES: SEWERAGE LICENSEES

#### Textual Amendments

**F162** Pt. 4 Ch. 2A inserted (1.9.2015 for the insertion of s. 117G (except s. 117G(2)(e)(7)), 1.9.2015 for the insertion of s. 117K (except s. 117K(2)(e)(8)), 1.4.2016 for the insertion of ss. 117G(2)(e), 117P(4), 117R, 117S, 1.9.2016 for the insertion of ss. 117I for specified purposes, 117J, 117K(2)(e)(8), 117L, 30.3.2017 for the insertion of s. 117G so far as not already in force and ss. 117F, 117H) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 4**; [S.I. 2015/773](#), **art. 3(d)** (with art. 5); [S.I. 2015/1469](#), **art. 3(e)**; [S.I. 2016/465](#), arts. 2(k), **3(f)** (with Sch. 2) (as amended (22.3.2017) by [S.I. 2017/462](#), **art. 16**); [S.I. 2017/462](#), **art. 2(d)**

#### Modifications etc. (not altering text)

**C86** Pt. 4 Ch. 2A applied (with modifications) (3.10.2016) by [The Water and Sewerage Undertakers \(Exit from Non-household Retail Market\) Regulations 2016 \(S.I. 2016/744\)](#), regs. 1(2), **53**

*Duties of sewerage undertakers as regards enabling the provision of sewerage services*

#### 117A Use of undertaker's sewerage system

- (1) This section applies where a sewerage licensee with a retail authorisation (“L”) requests a sewerage undertaker to permit the use of the undertaker's sewerage system

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for the purpose of enabling L to provide sewerage services in respect of premises that—

- (a) L is to serve in accordance with L's retail authorisation, and
- (b) are in the area of the sewerage undertaker.

(2) Where this section applies, the undertaker must in accordance with a section 117E agreement take such steps—

- (a) for the purpose of connecting the drains or sewers of the premises in question to the undertaker's sewerage system, or
- (b) in respect of that system,

as may be provided for in that agreement in order to enable the requested use of that system.

(3) A sewerage undertaker is not required by this section to permit the use of its sewerage system, or to take any steps to enable its use, if the sewerage licensee making a request has not secured by means of—

- (a) a request under section 117B made by the licensee, or
- (b) a request under section 117C made by the licensee or another sewerage licensee,

that there is to be provision for dealing with or removing matter from the sewerage system in quantities determined by reference to the extent of sewerage services provided in respect of the premises in question.

(4) Where—

- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), 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 does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117E agreement provides for such liability as regards those steps.

(5) For the purposes of this section and sections 117B and 117C—

- (a) premises which are outside a sewerage undertaker's area are to be treated as being within that area if they are provided with sewerage services using the undertaker's sewerage system, and
- (b) any sewers or drains of the sewerage undertaker which are used for the purpose of serving premises as mentioned in paragraph (a) are to be treated as being part of the undertaker's sewerage system (if they would not otherwise be part of it).

(6) In this section and sections 117B to 117D—

- (a) references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(7);
- (b) references to the retail authorisation of a sewerage licensee are to be construed in accordance with Schedule 2B.

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### **117B Matter dealt with by sewerage undertaker**

- (1) This section applies where a sewerage licensee with a retail authorisation (“L”) requests a sewerage undertaker to deal effectually with certain quantities of matter in its sewerage system in circumstances where—
  - (a) sewerage services are to be provided in accordance with L's retail authorisation in respect of particular premises in the area of the undertaker, and
  - (b) the quantities to be dealt with are to be determined by reference to the extent of sewerage services provided in respect of those premises.
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117E agreement—
  - (a) take such steps in respect of the undertaker's sewerage system as may be provided for in that agreement in order to enable the use of that system for the purpose in subsection (1), and
  - (b) having taken those steps, deal with matter as requested.
- (3) Where—
  - (a) a request has been made by a sewerage licensee for the purposes of subsection (1), 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 does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117E agreement provides for such liability as regards those steps.

### **117C Removal of matter from sewerage system by a sewerage licensee**

- (1) This section applies where a sewerage licensee with a wholesale authorisation (“L”) requests a sewerage undertaker to permit L to remove certain quantities of matter from the undertaker's sewerage system in circumstances where—
  - (a) sewerage services are to be provided in accordance with a retail authorisation (whether L's or another's) in respect of particular premises in the area of the undertaker, and
  - (b) the quantities to be removed are to be determined by reference to the extent of sewerage services provided in respect of those premises.
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117E agreement—
  - (a) take such steps, including steps in respect of the undertaker's sewerage system, as may be provided for in that agreement in order to enable L to remove matter from the undertaker's sewerage system as requested, and
  - (b) having taken those steps, permit that requested removal of matter from that sewerage system.
- (3) Where—
  - (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and

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- (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 does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117E agreement provides for such liability as regards those steps.

- (4) A pipe connecting a sewerage undertaker's sewerage system to a sewage disposal works that is laid because of subsection (2)(a) is to be regarded as a disposal main for the purposes of this Act, subject to any provision to the contrary.
- (5) In this section, a reference to a wholesale authorisation is to be construed in accordance with Schedule 2B.

#### **117D Connections for the purposes of a disposal authorisation**

- (1) This section applies where a sewerage licensee with a disposal authorisation (“L”) requests a sewerage undertaker to permit L to remove matter from the undertaker's sewerage system.
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117E agreement—
- (a) take such steps, including steps in respect of the undertaker's sewerage system, as may be provided for in that agreement in order to enable L to remove matter from the undertaker's sewerage system as requested, and
- (b) having taken those steps, permit that requested removal of matter from that sewerage system.
- (3) Where—
- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), 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 does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117E agreement provides for such liability as regards those steps.

- (4) A pipe connecting a sewerage undertaker's sewerage system to a sewage disposal works that is laid because of subsection (2)(a) is to be regarded as a disposal main for the purposes of this Act, subject to any provision to the contrary.
- (5) In this section, a reference to a disposal authorisation is to be construed in accordance with Schedule 2B.

#### **117E Agreements as to duties under sections 117A to 117D**

- (1) On the application of—
- (a) a sewerage licensee that has made a request under sections 117A to 117D, or

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- (b) a sewerage undertaker to which such a request has been made, the Authority may by order require a sewerage undertaker to perform the duty in question under sections 117A to 117D, for such period and on such terms and conditions as may be specified in the order.
- (2) The Authority may make an order under subsection (1) only if—
- (a) it appears to the Authority that the sewerage undertaker is required to perform the duty in question, and
  - (b) it is satisfied that the parties cannot reach agreement within a reasonable time.
- (3) An order under subsection (1) has effect as an agreement between—
- (a) the sewerage licensee, and
  - (b) the sewerage undertaker required to perform the duty in question.
- (4) On the application of a party to a section 117E agreement, the Authority may, if it is satisfied that the parties cannot reach agreement on the variation or termination of the agreement, by order vary or terminate the agreement.
- (5) If an order under subsection (4) is made in relation to a section 117E agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect, as the case may be.
- (6) An order under subsection (4) may require one party to the agreement to pay compensation to the other.
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the performance of a duty under sections 117A to 117D by a sewerage undertaker, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement for the performance of a duty under sections 117A to 117D by a sewerage undertaker, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In this Chapter a reference to a section 117E agreement is a reference to—
- (a) an agreement for the performance of a duty under sections 117A to 117D by a sewerage undertaker, or
  - (b) an order deemed to be such an agreement under subsection (3), or
  - (c) an agreement varied by order under subsection (4).

#### **117F Codes in respect of section 117E agreements**

- (1) The Authority may issue one or more codes in respect of section 117E agreements.
- (2) A code may make provision about—
- (a) procedures in connection with making a section 117E agreement;

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- (b) procedures in connection with varying or terminating a section 117E agreement;
  - (c) the terms and conditions of a section 117E agreement, including terms as to the duration of such an agreement;
  - (d) principles for determining the terms and conditions that should or should not be incorporated into a section 117E agreement.
- (3) A code may make provision about the steps to be taken by the Authority in determining for the purposes of section 117E(2) whether a sewerage undertaker is, in the particular case, required to perform a duty under sections 117A to 117D.
- (4) If the Authority considers that a sewerage undertaker or a sewerage licensee is not acting as required by a code, the Authority may give the undertaker or the licensee a direction to do, or not to do, a thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
- (6) It is the duty of a sewerage undertaker or a sewerage licensee to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make—
- (a) different provision for different persons or descriptions of person;
  - (b) different provision for different duties under sections 117A to 117D.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to section 117E agreements made before the revised code comes into effect.

### **117G Codes under section 117F: procedure**

- (1) Before issuing a code under section 117F, the Authority must—
- (a) prepare a draft of the proposed code under section 117F, and
  - (b) consult persons in accordance with subsections (2) and (3).
- (2) The relevant persons are—
- (a) the Secretary of State;
  - (b) the appropriate agency;
  - (c) the Council;
  - (d) any sewerage undertakers likely to be affected by the proposed code;
  - (e) any sewerage licensees likely to be affected by the proposed code;
  - (f) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (4) Before a code under section 117F prepared by the Authority is issued for the first time, the Secretary of State may direct the Authority—
- (a) not to issue the code, or
  - (b) to issue the code with specified modifications.

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- (5) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (6) In this section “the appropriate agency” means—
  - (a) the Environment Agency, in relation to section 117E agreements made with sewerage undertakers whose areas are wholly in England;
  - (b) both the Environment Agency and the NRBW, in relation to section 117E agreements made with sewerage undertakers whose areas are partly in England and partly in Wales.
- (7) This section is subject to section 117H.

#### **117H Codes under section 117F: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue a revised code under section 117F and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 117G does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

#### **117I Rules about charges**

- (1) The Authority must issue rules about charges that may be imposed by sewerage undertakers under a section 117E agreement.
- (2) The rules may in particular make provision about—
  - (a) the types of charges that may be imposed;
  - (b) the amount or the maximum amount, or methods for determining the amount or maximum amount, of any type of charge;
  - (c) principles for determining what types of charges may or may not be imposed;
  - (d) principles for determining the amount of any charge that may be imposed;
  - (e) publication of the charges that may be imposed.
- (3) The rules must include provision for and in connection with requiring a sewerage undertaker to impose on a sewerage licensee only such charges as would enable the licensee, where the services it provides to a person under its retail authorisation are

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- services to which a section 142(2)(b) agreement would apply if the undertaker had continued to provide the services, to charge for those services at the same rate or rates as would have applied if the section 142(2)(b) agreement had applied.
- (4) In subsection (3) “section 142(2)(b) agreement” means an agreement to which section 142(2)(b) applies.
  - (5) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may—
    - (a) give the undertaker a direction to do, or not to do, a thing specified in the direction, or
    - (b) in a case where a section 117E agreement to which the undertaker is party requires modification in order to conform to the rules, give a direction to the undertaker and the sewerage licensee in question to modify the agreement.
  - (6) It is the duty of a sewerage undertaker or a sewerage licensee to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
  - (7) The rules may—
    - (a) make different provision for different persons or descriptions of person;
    - (b) make different provision for different purposes;
    - (c) make provision subject to exceptions.
  - (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
  - (9) The Authority must issue revised rules if—
    - (a) guidance is issued under section 117M, and
    - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
  - (10) Revised rules may include provision for applying any of the revisions to section 117E agreements made before the revised rules come into effect.

### **117J Rules about charges: provision about the reduction of charges**

- (1) Rules under section 117I may provide for the reduction of charges payable under a section 117E agreement where—
  - (a) a sewerage licensee that has a retail authorisation is party to the section 117E agreement, and
  - (b) other conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
  - (a) specify conditions relating to any party to the section 117E agreement;
  - (b) specify conditions about persons taking steps for the purpose of reducing or managing demand for sewerage services;
  - (c) specify conditions about the premises by reference to which such steps are to be taken;
  - (d) specify conditions about reducing charges payable by a person who—
    - (i) is not party to the section 117E agreement, and
    - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition specified under paragraph (b).



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- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the sewerage undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
  - (a) make provision as to the content of the notice;
  - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
  - (a) the amount of the charge, with and without the reduction;
  - (b) the period for which the reduction has effect.

### **117K Rules under section 117I: procedure**

- (1) Before issuing rules under section 117I, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the appropriate agency;
  - (c) the Council;
  - (d) any sewerage undertakers likely to be affected by the proposed rules;
  - (e) any sewerage licensees likely to be affected by the proposed rules;
  - (f) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 117M in making rules under section 117I.
- (5) Before rules under section 117I prepared by the Authority are issued, the Secretary of State may direct the Authority not to issue the rules.
- (6) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (7) In this section “the appropriate agency” means—
  - (a) the Environment Agency, in relation to section 117E agreements made with sewerage undertakers whose areas are wholly in England;
  - (b) both the Environment Agency and the NRBW, in relation to section 117E agreements made with sewerage undertakers whose areas are partly in England and partly in Wales.
- (8) This section is subject to section 117L.

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### **117L Rules under section 117I: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 117I and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 117K does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Secretary of State of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Secretary of State may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
  - (a) that period of 14 days expires, or
  - (b) the Secretary of State notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
 whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised rules, and
  - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.

### **117M Rules under section 117I: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 117I.
- (2) Before issuing the guidance, the Minister must—
  - (a) prepare a draft of the proposed guidance;
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are such persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means the Secretary of State.

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## **117N Designation of strategic sewerage provision**

- (1) Subsection (2) applies if at any time the Authority determines that the removal of matter from a sewerage undertaker's sewerage system that the undertaker is required to permit under section 117C or 117D in accordance with a section 117E agreement constitutes strategic sewerage provision.
- (2) The Authority must designate the removal of matter as strategic sewerage provision.
- (3) Subsection (4) applies if—
  - (a) a sewerage undertaker requests the Authority to make a determination that a particular removal of matter constitutes strategic sewerage provision for the purposes of subsection (1), or
  - (b) the Authority otherwise proposes to make a determination that a particular removal of matter constitutes strategic sewerage provision for the purposes of subsection (1).
- (4) The Authority must give notice of the request or proposed determination to—
  - (a) the Secretary of State;
  - (b) the appropriate agency;
  - (c) the other party or parties, or the parties, to the section 117E agreement; and
  - (d) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) A notice under subsection (4) must specify the time within which representations or objections with respect to the request or proposed determination may be made.

The time specified may not be less than 28 days from the date on which the notice was given.
- (6) The Authority must consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that a particular removal of matter designated under this section as strategic sewerage provision no longer constitutes such provision, it must cancel its designation.
- (8) If the Authority proposes to make a determination under subsection (7) that a particular removal of matter no longer constitutes strategic sewerage provision, it must give notice of the proposed determination to—
  - (a) the Secretary of State;
  - (b) the appropriate agency; and
  - (c) the parties to the section 117E agreements in question.
- (9) Subsection (5) applies to a notice under subsection (8) as it applies to a notice under subsection (4), and subsection (6) applies accordingly.
- (10) For the purposes of this section, a removal of matter from a sewerage system is strategic sewerage provision if, without that removal of matter, there is a substantial risk that the sewerage undertaker would be unable—
  - (a) to maintain its services to its own customers, and
  - (b) to fulfil its obligations under section 117B to deal with matter in its sewerage system.

*Status: Point in time view as at 19/12/2017.*

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- (11) In this section and section 117O “the appropriate agency”, in relation to a determination in respect of the removal of matter from a sewerage undertaker's system, means—
- (a) the Environment Agency, in a case where the undertaker's area is wholly in England;
  - (b) both the Environment Agency and the NRBW, in a case where the undertaker's area is partly in England and partly in Wales.

### **117O Designation of collective strategic sewerage provision**

- (1) Subsection (2) applies if at any time the Authority determines that two or more cases of the removal of matter from a sewerage system—
  - (a) each of which is a removal by a sewerage licensee, and
  - (b) each of which is a removal that a sewerage undertaker is required to permit under section 117C or 117D in accordance with a section 117E agreement, constitute collective strategic sewerage provision.
- (2) The Authority must designate the cases of the removal of matter as collective strategic sewerage provision.
- (3) Subsection (4) applies if—
  - (a) a sewerage undertaker requests the Authority to make a determination that two or more cases of the removal of matter from a sewerage system constitute collective strategic sewerage provision for the purposes of subsection (1), or
  - (b) the Authority otherwise proposes to make a determination that two or more cases of the removal of matter from a sewerage system constitute collective strategic sewerage provision for the purposes of subsection (1).
- (4) The Authority must give notice of the request or proposed determination to—
  - (a) the Secretary of State;
  - (b) the appropriate agency;
  - (c) the other party or parties, or the parties, to the section 117E agreements in question; and
  - (d) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) A notice under subsection (4) must specify the time within which representations or objections with respect to the request or proposed determination may be made.  
  
 The time specified may not be less than 28 days from the date on which the notice was given.
- (6) The Authority must consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that the cases of the removal of matter from a sewerage system designated under this section as collective strategic sewerage provision no longer constitute such provision, it must cancel their designation.
- (8) If the Authority proposes to make a determination under subsection (7) that the cases of the removal of matter from a sewerage system no longer constitute collective strategic sewerage provision, it must give notice of the proposed determination to—
  - (a) the Secretary of State;

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- (b) the appropriate agency; and
  - (c) the parties to the section 117E agreements in question.
- (9) Subsection (5) applies to a notice under subsection (8) as it applies to a notice under subsection (4), and subsection (6) applies accordingly.
- (10) For the purposes of this section, two or more cases of the removal of matter from a sewerage system are collective strategic sewerage provision if, without those cases of the removal of matter, there is a substantial risk that the sewerage undertaker would be unable—
- (a) to maintain its services to its own customers, and
  - (b) to fulfil its obligations under section 117B to deal with matter in its sewerage system.

### *Offences*

#### **117P** <sup>F162</sup>**Prohibition on unauthorised use of sewerage system**

- (1) No person may use the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the purpose of providing sewerage services to premises of—
- (a) a customer,
  - (b) the person so using that system, or
  - (c) a person associated with that person.
- (2) Subsection (1) is subject to subsections (3) and (4) and section 117R.
- (3) Subsection (1) does not apply where that use of the system is made by—
- (a) the sewerage undertaker, or
  - (b) a sewerage licensee in pursuance of its sewerage licence.
- (4) The Secretary of State may by regulations specify further circumstances in which subsection (1) does not apply.
- (5) A person who contravenes subsection (1) is guilty of an offence.
- (6) An undertaking entered into which involves a contravention of subsection (1) is unenforceable.
- (7) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (8) Proceedings for an offence under this section may not be instituted except by—
- (a) the Secretary of State, or
  - (b) the Authority.
- (9) For the purposes of this section, a person (A) is associated with another person (B) if they would be associated with each other for the purposes of Schedule 2B if A were a sewerage licensee.
- (10) In this section and sections 117Q and 117R, references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(7).

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**Modifications etc. (not altering text)**

**C87** S. 117P(1) excluded (1.4.2017) by [The Sewerage Services \(Exception from Sewerage System Prohibition\) \(England\) Regulations 2017 \(S.I. 2017/244\)](#), regs. 1, **2(1)**

**117Q Prohibition on unauthorised removal of matter from sewerage system**

- (1) No person other than the undertaker may remove matter from the sewerage system of a sewerage undertaker whose area is wholly or mainly in England.
- (2) Subsection (1) is subject to subsections (3) and (4) and section 117R.
- (3) Subsection (1) does not apply where —
  - (a) matter is removed by a sewerage licensee in pursuance of its sewerage licence, or
  - (b) matter is removed by another sewerage undertaker under a main connection agreement (within the meaning of section 110A).
- (4) The Secretary of State may by regulations specify further circumstances in which subsection (1) does not apply.
- (5) An undertaking entered into which involves a contravention of subsection (1) is unenforceable.
- (6) A person who contravenes subsection (1) is guilty of an offence.
- (7) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding £20,000;
  - (b) on conviction on indictment, to a fine.
- (8) For the purposes of section 210, the penalty on conviction on indictment of an offence under this section is to be deemed to include imprisonment for a term not exceeding two years (in addition to or instead of a fine).
- (9) Proceedings for an offence under this section may not be instituted except by—
  - (a) the Secretary of State, or
  - (b) the Authority.

**117R Sections 117P and 117Q: exemptions**

- (1) The Secretary of State may by order made by statutory instrument grant exemption from section 117P(1) or 117Q(1) to—
  - (a) a person or persons of a class;
  - (b) generally or to such extent as may be specified in the order;
  - (c) unconditionally or subject to such conditions as may be specified in the order.
- (2) Before making an order under subsection (1), the Secretary of State must give notice—
  - (a) stating that the Secretary of State proposes to make such an order and setting out the terms of the proposed order;
  - (b) stating the reasons why the Secretary of State proposes to make the order in the terms proposed; and

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- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,  
and must consider any representations or objections which are duly made and not withdrawn.
- (3) The notice required by subsection (2) is to 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 particular person is to be given—
  - (a) by serving a copy of the exemption on the person, 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 particular class is to 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) The conditions that may be specified may, in particular, require any person carrying on any activity allowed by 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 the person's 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;
  - (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.

## **117S Section 117R: supplementary**

- (1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a particular person under section 117R(1) 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.

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- (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 particular class under section 117R(1) 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 particular class under section 117R(1) 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) or giving a direction under subsection (3)(b) or (c), the Secretary of State must—
- (a) consult the Authority, and
  - (b) give notice—
    - (i) stating that the Secretary of State proposes to make such an order or give such a direction,
    - (ii) stating the reasons why the Secretary of State proposes to make such an order or give such a direction, and
    - (iii) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,
 and must consider any representations or objections which are duly made and not withdrawn.
- (5) The notice required by subsection (4)(b) is to be given—
- (a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;
  - (b) where the Secretary of State is proposing to make an order under subsection (2), 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;
  - (c) where the Secretary of State is proposing to give a direction under subsection (3)(b) or (c), by serving a copy of it on the person from whom the Secretary of State proposes to withdraw the exemption.
- (6) A statutory instrument containing—
- (a) an order under subsection (1) or (2), or
  - (b) an order under section 117R(1),
- is subject to annulment in pursuance of a resolution of either House of Parliament.]



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## CHAPTER III

### TRADE EFFLUENT

#### Modifications etc. (not altering text)

- C88** Pt. 4 Ch. 3 (ss. 118-141) amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), Sch. 3 Pt. I para. 8 (with ss. 42, 46).  
Pt. 4 Ch. 3 (ss. 118-141) modified (1.2.1996) by 1995 c. 25, s. 5 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 2  
Pt. 4 Ch. 3 (ss. 118-141): transfer of functions (1.4.1996) by 1995 c. 25, s. 2(2)(b) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- C89** Pt. 4 Ch. 3 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), Sch. 1)
- C90** Pt. 4 Ch. 3 modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 paras. 1(3), 2 Table 9 (with regs. 1(3), 77-79, Sch. 4)

#### *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.
- (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.

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### *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
  - (c) the highest rate at which it is proposed to discharge the trade effluent.

#### **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 [<sup>F163</sup>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 [<sup>F163</sup>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.
- <sup>F164</sup>(9) If a sewerage undertaker fails, within the period provided by subsection (2) above, to refer to [<sup>F163</sup>the appropriate agency] any question which he is required by subsection (1) above to refer to [<sup>F163</sup>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.

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- (10) If [<sup>F163</sup>the appropriate agency] becomes aware of any such failure as is mentioned in subsection (9) above, [<sup>F163</sup>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.]

#### Textual Amendments

**F163** Words in s. 120 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 239](#) (with [Sch. 7](#))

**F164** S. 120(9)(10) substituted (1.4.1996) for s. 120(7)(8) by 1995 c. 25, s. 120(1), [Sch. 22 para. 105\(1\)\(4\)](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)

### 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
  - (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;

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- (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—
- (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 [F165Merchant Shipping Act 1995].
- (7) This section has effect subject to the provisions of sections 133 and 135(3) below.

#### **Textual Amendments**

**F165** Words in s. 121(6) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 89(a)** (with s. 312(1))

## **122 Appeals to the Director with respect to decisions on applications etc.**

- (1) Any person aggrieved by—

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- (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 Director.
- (2) On an appeal under this section in respect of a refusal or failure to give a consent, the Director may give the necessary consent, either unconditionally or subject to such conditions as he 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 Director 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 Director 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 Director 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 Director 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 Director under this section shall be subject to the provisions of sections 123, 128, 133, 135 and 137 below.

### **123 Appeals with respect to the discharge of special category effluent.**

- (1) Where a reference is made to [<sup>F166</sup>the [<sup>F167</sup>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 [<sup>F166</sup>the [<sup>F167</sup>appropriate agency]] serves notice on the sewerage undertaker in question of his determination on the reference.
- (2) If, on an appeal under section 122 above, it appears to the Director—
  - (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 Director 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 Director—

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- (a) has himself referred the questions mentioned in section 120(1) above to [<sup>F166</sup>the [<sup>F167</sup>appropriate agency]]; and
  - (b) has been sent a copy of the notice of [<sup>F166</sup>the [<sup>F168</sup>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 Director, 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.

#### Textual Amendments

- F166** Words in s. 123(1)(3)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 106** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F167** Words in s. 123 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 240(2)** (with Sch. 7)
- F168** Words in s. 123(3)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 240(3)** (with Sch. 7)

## 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

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(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.

## **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.

## **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 Director, at any later time, appeal to the Director 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

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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 Director 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 Director 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 Director 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 Director 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 Director 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 Director under this section shall be subject to the provisions of sections 133, 135 and 137 below.

**127 Review by <sup>F169</sup>[the <sup>F170</sup>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, <sup>F171</sup>[the <sup>F170</sup>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, <sup>F172</sup>the <sup>F170</sup>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 <sup>F172</sup>the <sup>F173</sup>appropriate agency's]] determination on any reference or



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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 [F174EU] 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.

#### Textual Amendments

**F169** Words in s. 127 sidenote substituted (1.4.1996) by 1995 c. 25, ss. 120(1), **Sch. 22 para. 107** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F170** Words in s. 127 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 241(2)** (with Sch. 7)

**F171** Words in s. 127(1) substituted (1.4.1996) by 1995 c. 25, ss. 120(1), **Sch. 22 para. 107** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F172** Words in s. 127 substituted (1.4.1996) by 1995 c. 25, ss. 120(1), **Sch. 22 para. 107** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F173** Words in s. 127(2)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 241(3)** (with Sch. 7)

**F174** Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

#### *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 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 Director for such a substitution.

(2) The Director 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 he 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.

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- (4) The Director, before varying a direction on an application under subsection (1) above, shall take into account any representations made to him by the owner or occupier of the trade premises in question.

*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 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.

**130 Reference to [<sup>F175</sup>the [<sup>F176</sup>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 [<sup>F175</sup>the [<sup>F176</sup>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 [<sup>F175</sup>the [<sup>F176</sup>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.

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(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.

<sup>F177</sup>[(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 <sup>F176</sup>appropriate agency] any question which he is required by that subsection to refer to <sup>F178</sup>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.

(8) If the <sup>F176</sup>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 <sup>F178</sup>the appropriate agency] any question which it is required to refer to <sup>F178</sup>the appropriate agency] by that subsection,

<sup>F178</sup>the appropriate agency] may proceed as if the reference required by that subsection had been made.

(9) If the <sup>F176</sup>appropriate 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 <sup>F176</sup>appropriate agency] any question which he is required by that subsection to refer to <sup>F178</sup>the appropriate agency], <sup>F178</sup>the appropriate 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.]

#### Textual Amendments

**F175** Words in s. 130(1)(2) and sidenote substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 108(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F176** Words in s. 130 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 242(2)** (with Sch. 7)

**F177** S. 130(7)-(9) substituted (1.4.1996) for s. 130(5)(6) by 1995 c. 25, s. 120(1), **Sch. 22 para. 108(1)(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F178** Words in s. 130 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 242(3)** (with Sch. 7)

#### 131 Review by <sup>F179</sup>[the <sup>F180</sup>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, <sup>F181</sup>the <sup>F180</sup>appropriate agency]] may review the questions—

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- (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, [<sup>F181</sup>the [<sup>F180</sup>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 [<sup>F181</sup>the [<sup>F182</sup>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 [<sup>F174</sup>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.
- (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.

#### Textual Amendments

**F174** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

**F179** Words in s. 131 sidenote substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 109** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F180** Words in s. 131 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 243(2)** (with Sch. 7)

**F181** Words in s. 131 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 109** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F182** Words in s. 131(2)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 243(3)** (with Sch. 7)

*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 [<sup>F183</sup>the [<sup>F184</sup>appropriate agency]] under section 120, 123 or 130 above; and

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- (b) any review by [<sup>F183</sup>the [<sup>F184</sup>appropriate agency]] under section 127 or 131 above.
- (2) On a reference or review to which this section applies, it shall be the duty of [<sup>F183</sup>the [<sup>F185</sup>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 [<sup>F186</sup>the [<sup>F187</sup>appropriate agency]]—
- [<sup>F188</sup>(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 [<sup>F189</sup>the [<sup>F190</sup>appropriate agency]] with respect to those questions by a person to whom [<sup>F189</sup>the [<sup>F190</sup>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, [<sup>F191</sup>the [<sup>F192</sup>appropriate agency]] shall serve notice on [<sup>F193</sup>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 [<sup>F194</sup>the [<sup>F195</sup>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 [<sup>F196</sup>the appropriate agency], by virtue of subsection (4)(b) above, to

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specify such conditions as [<sup>F196</sup>the appropriate agency] considers appropriate in a notice under this section.

<sup>F197</sup>(7) .....

(8) <sup>F198</sup>[The [<sup>F199</sup>appropriate agency]] shall send a copy of every notice served under this section to the Director.

#### Textual Amendments

- F183** Words in s. 132(1)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F184** Words in s. 132(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(2)** (with Sch. 7)
- F185** Words in s. 132(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(3)(a)** (with Sch. 7)
- F186** Words in s. 132(2)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F187** Words in s. 132(2)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(3)(b)(i)** (with Sch. 7)
- F188** S. 132(2)(ai)(bi) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(3)(b)(ii)** (with Sch. 7)
- F189** Words in s. 132(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F190** Word in s. 132(2)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(3)(c)** (with Sch. 7)
- F191** Words in s. 132(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F192** Words in s. 132(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(4)(a)** (with Sch. 7)
- F193** Words in s. 132(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(4)(b)** (with Sch. 7)
- F194** Words in s. 132(4)(c) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F195** Words in s. 132(4)(c) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(5)** (with Sch. 7)
- F196** Words in s. 132(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(6)** (with Sch. 7)
- F197** S. 132(7) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 110(1)(5), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F198** Words in s. 132(8) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F199** Words in s. 132(8) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 244(7)** (with Sch. 7)

### 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 Director,

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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 Director, any of his 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.
- <sup>F200</sup>(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 [<sup>F201</sup>appropriate agency] may, for the purpose of securing compliance with the provisions of a notice under section 132 above, by serving notice on [<sup>F202</sup>any person consulted under section 132(2)(a)] 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.]

#### Textual Amendments

**F200** S. 133(5)(6) substituted (1.4.1996) for s. 133(4) by 1995 c. 25, s. 120(1), **Sch. 22 para. 111** (with s. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F201** Words in s. 133(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 245(a)** (with Sch. 7)

**F202** Words in s. 133(6) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 245(b)** (with Sch. 7)

### 134 Compensation in respect of determinations made for the protection of public health etc.

- (1) Subject to subsection (2) below, [<sup>F203</sup>the [<sup>F204</sup>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 [<sup>F203</sup>the [<sup>F204</sup>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) [<sup>F203</sup>The [<sup>F205</sup>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

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- (b) consideration by [<sup>F203</sup>the [<sup>F205</sup>appropriate agency]] of material information which was not reasonably available to [<sup>F206</sup>the appropriate agency] at that time.
- (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.

#### Textual Amendments

- F203** Words in s. 134(1)(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 112(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F204** Words in s. 134(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 246(2)** (with Sch. 7)
- F205** Words in s. 134(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 246(3)(a)** (with Sch. 7)
- F206** Words in s. 134(2)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 246(3)(b)** (with Sch. 7)

#### *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 Director 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.
- (2) In so far as any such conditions as are mentioned in subsection (1) above do fall to be determined by the Director, 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.

### [135A] <sup>F207</sup>Power of the [<sup>F208</sup>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 [<sup>F209</sup>appropriate agency] may, by notice in writing served on any person, require that person to furnish such information specified in the notice as [<sup>F210</sup>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.



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- (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.]

#### Textual Amendments

- F207** S. 135A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 113** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F208** Words in s. 135A heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 247(3)** (with Sch. 7)
- F209** Words in s. 135A(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 247(2)(a)** (with Sch. 7)
- F210** Words in s. 135A(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 247(2)(b)** (with Sch. 7)

### 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.

### 137 Statement of case on appeal.

- (1) At any stage of the proceedings on an appeal under section 122 or 126(1) above, the Director 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 [<sup>F211</sup>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.

#### Textual Amendments

- F211** Words in s. 137(2) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 59, 148(1), **Sch. 11 para. 1(2)**; S.I. 2009/1604, **art. 2(d)**

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### 138 Meaning of “special category effluent”.

(1) Subject to <sup>F212</sup>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.

<sup>F213</sup>(1A) If trade effluent is produced, or to be produced, by operating <sup>F214</sup>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 <sup>F215</sup>the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)];

- <sup>F216</sup>(aa) [ the expressions “Part A activity”, “Part A installation” and “Part A mobile plant” have the same meaning as in <sup>F217</sup>those Regulations];]
- (b) “permit” means a permit <sup>F218</sup>granted under <sup>F219</sup>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.

(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) <sup>F220</sup>In subsection (2) and (3) above]—

- (a) “authorisation”, “enforcing authority” and “prescribed process” have the meanings given by section 1 of the <sup>M17</sup>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

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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.

#### Textual Amendments

- F212** Words in s. 138(1) substituted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(a)**
- F213** S. 138(1A)(1B) inserted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(b)**
- F214** Words in s. 138(1A) substituted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(2)**
- F215** Words in s. 138(1B)(a) substituted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 8(3)** (with regs. 1(3), 77-79, Sch. 4)
- F216** S. 138(1B)(aa) inserted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(4)**
- F217** Words in s. 138(1B)(aa) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 7(b)** (with reg. 1(2), Sch. 4)
- F218** Words in s. 138(1B)(b) substituted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(5)**
- F219** Words in s. 138(1B)(b) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 7(b)** (with reg. 1(2), Sch. 4)
- F220** Words in s. 138(4) substituted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(c)**

#### Marginal Citations

- M17** 1990 c. 43.

### 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.

### 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 <sup>M18</sup>Water Consolidation (Consequential Provisions) Act 1991 or to sections 16 and 17

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of the <sup>M19</sup>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 <sup>M20</sup>Water Act 1989.

#### Marginal Citations

- M18** 1991 c. 60.  
**M19** 1978 c. 30.  
**M20** 1989 c. 15.

### *Interpretation of Chapter III*

#### 141 Interpretation of Chapter III.

- (1) In this Chapter, except in so far as the context otherwise requires—
- [<sup>F221</sup>“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.
- (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

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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.

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**Textual Amendments**

**F221** Words in s. 141(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 248** (with Sch. 7)

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