



Water Industry Act 1991

1991 CHAPTER 56

PART IV **E+W**

SEWERAGE SERVICES

CHAPTER II **E+W**

PROVISION OF SEWERAGE SERVICES

Requisition of public sewer

98 Duty to comply with sewer requisition. **E+W**

- (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.

[^{F1}(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—

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- (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;
 - [^{F2}(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 ^{M1}New Towns Act 1981—
 - (i) the [^{F3}new towns residuary body]; and
 - (ii) ^{F4}. . . the development corporation for the new town ^{F4}. . .;
 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 ^{M2}Local Government, Planning and Land Act 1980, the urban development corporation.
- [^{F5}(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 [^{F6}new towns residuary body]; and
 - (ii) the development corporation for the new town; and
 - (e) where those premises are situated within an area designated as an urban development area under Part 16 of the Local Government, Planning and Land Act 1980, the urban development corporation.]
- (3) The duty of a sewerage undertaker under this section to provide a public sewer [^{F7}or, as the case may be, a lateral drain] shall be owed to the person who requires the provision of the sewer [^{F8}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 [^{F9}sewerage] undertaker

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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^{F10} . . . to which a requirement under this section relates, is a reference—
- (a) where there are buildings on [^{F11}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 [^{F12}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

- F1** 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](#))
- F2** S. 98(2)(ca) inserted (15.1.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(1)(l), **Sch. 22 para. 42**
- F3** 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)
- F4** 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**
- F5** 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](#))
- F6** 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)
- F7** 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](#))
- F8** 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](#))
- F9** 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
- F10** 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](#))
- F11** 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](#))
- F12** 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

- M1** 1981 c. 64.
M2 1980 c. 65.

99 Financial conditions of compliance. **E+W**

- (1) The conditions mentioned in section 98(1)(c) [^{F13}or 98(1A)(c)] above are satisfied in relation to a requirement for the provision of a public sewer [^{F14}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) [^{F15}or, as the case may be, subsection (2A)]

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- below have been given by the person or persons who have required the provision of the sewer [^{F14}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—
- [^{F16}(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
- (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 apportioned in such manner as they may agree.
- [^{F17}(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.]
- [^{F18}(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—
- [^{F19}(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]

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- (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, [F20 may be referred to the Authority for determination under section 30A above by either party to the dispute.]
- [F21(7) In this section “relevant deficit” and “discounted aggregate deficit” have the meanings given by sections 100 and 100A below, respectively.]

Textual Amendments

- F13** 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](#))
- F14** 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](#))
- F15** 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](#))
- F16** 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](#))
- F17** 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](#))
- F18** 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](#))
- F19** 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](#))
- F20** 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](#))
- F21** 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. **E+W**

- (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.

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- (3) A determination for the purposes of subsection (2) above shall be made either—
- (a) by the undertaker with the approval of the 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
 - (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 [^{F22}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 ^{M3}Water Consolidation (Consequential Provisions) Act 1991, a requirement under section 71 of the ^{M4}Water Act 1989);
 - (b) a requirement under the provisions of section 16 of the ^{M5}Water Act 1973 (sewer requisitions); or

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- (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

F22 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

M3 1991 c. 60.

M4 1989 c. 15.

M5 1973 c. 37.

[^{F23} **100A** Calculation of “discounted aggregate deficit” for the purposes of section 99 **E** **+W**

- (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

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- (b) may be revoked at any time except in relation to a public sewer in respect of which the conditions referred to in section 99(1) above have already been satisfied.]

Textual Amendments

F23 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](#))

[^{F24}101 **Determination of completion date and route for requisitioned sewer or lateral drain.** **E+W**]

- (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.

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- (5) In this section “relevant day”, in relation to a requirement to provide a public sewer for any locality or, as the case may be, a lateral drain, means the day after whichever is the later of the following—
- (a) the day on which the conditions specified in section 99 above are satisfied in relation to the requirement; and
 - (b) the day on which the place or places where (as the case may be)—
 - (i) drains or private sewers to be used for the drainage of premises in that locality will communicate with the public sewer; or
 - (ii) the lateral drain will communicate with a public sewer and the remainder of the drain will connect with the lateral drain,are determined under subsection (3) above.]

Textual Amendments

F24 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](#))

^{F25}[Provision of public sewers otherwise than by requisition

Textual Amendments

F25 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**

^{F26}**101A Further duty to provide sewers.** **E+W**

- (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 ^{F27} . . . ;
 - (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 ^{F28} . . . 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;

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- (b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;
 - (c) the costs of providing that sewer;
 - (d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises or, as the case may be, the locality in question not being drained by means of a public sewer; and
 - (e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this section or otherwise) of public sewers, and the costs of so overcoming those effects.
- (4) Guidance issued by the Secretary of State under this section may—
- (a) relate to how regard is to be had to the considerations mentioned in paragraphs (a) to (e) of subsection (3) above;
 - (b) relate to any other matter which the Secretary of State considers may be a relevant consideration in any case and to how regard is to be had to any such matter;
 - (c) set out considerations, other than those mentioned in paragraphs (a) to (e) of subsection (3) above, to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this section;
 - (d) relate to how regard is to be had to any such consideration as is mentioned in paragraph (c) above;
 - (e) without prejudice to paragraphs (a) to (d) above, relate to how a sewerage undertaker is to discharge its functions under this section.
- (5) ^{F29}... 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) [^{F30}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,
- ^{F31} ...
- [The dispute is to be determined by the appropriate person and may be referred to the ^{F32}(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.

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- (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 [F33 appropriate person] —
- (a) shall notify the parties of the reasons for its decision on any dispute referred to it under [F34 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.
- (9) The decision of the [F35 appropriate person] on any dispute referred to it under [F36 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 [F37 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 [F37 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 [F39 appropriate person] ” means—
- F38(11) (a) the Environment Agency, in relation to disputes between sewerage undertakers and owners or occupiers of premises in England;
- (b) [F40 the Welsh Ministers] , in relation to disputes between sewerage undertakers and owners or occupiers of premises in Wales[F41, 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
- F42(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

- F26** 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**
- F27** 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**)
- F28** 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**)
- F29** 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**
- F30** 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**)
- F31** 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**)
- F32** 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**)

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- F33** 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)
- F34** 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)
- F35** 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)
- F36** 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)
- F37** 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)
- F38** 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)
- F39** 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)
- F40** 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)
- F41** 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)
- F42** 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)

[^{F43}101B]^{F43}Power to construct lateral drains following provision of public sewer] E+W

- (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.]

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Textual Amendments

F43 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](#))

Adoption etc. of sewers and disposal works

102 Adoption of sewers and disposal works. **E+W**

- (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;^{F44} . . .
 - ^{F45}(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 [^{F46}, 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 [^{F46}, lateral drain] or works.
- (3) A declaration or application under this section may be made with respect to a part only of a sewer.
- (4) A sewerage undertaker which proposes to make a declaration under this section—
 - (a) shall give notice of its proposal to the owner or owners of the sewer [^{F47}, 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 [^{F48} 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 [^{F49} 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;

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- (d) the method of construction and state of repair of the sewer [^{F50}, lateral drain] or works; and
 - (e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.
- (6) Any person who immediately before the making of a declaration under this section was entitled to use the sewer [^{F51} or lateral drain] in question shall be entitled to use it, or any sewer [^{F51} 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

- F44** 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](#))
- F45** 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](#))
- F46** 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](#))
- F47** 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](#))
- F48** 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](#))
- F49** 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](#))
- F50** 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](#))
- F51** 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)

- C1** 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. E+W

- (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; ^{F52} . . .
 - [^{F53}(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.
- [^{F54}(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 [^{F55}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

- F52** 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](#))
- F53** 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](#))
- F54** 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](#))
- F55** 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** E

+W

- [^{F56}(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 [^{F57} mentioned in paragraph (a) or (b) of subsection (1) above] may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this section.
- (3) An application under subsection (2) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.
- (4) Where—
- (a) a person who has made an application to a sewerage undertaker under subsection (2) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and
 - (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 105 below, to respond to the application as gave that person a reasonable opportunity to provide the required information 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 [^{F58}, lateral drain] or works to which it relates.
- (6) ^{F59}
- [^{F60}(6A) Without limiting the terms which may be included in an agreement under this section, the terms of an agreement which relates to a drain may include in particular—
- (a) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;
 - (b) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;
 - (c) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and
 - (d) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.]

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[^{F61}(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.]

[^{F62}(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

- F56** 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)
- F57** 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)
- F58** 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)
- F59** 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)
- F60** 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)
- F61** 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)
- F62** 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. **E+W**

(1) An owner of any sewer [^{F63}, lateral drain] or sewage disposal works may appeal to the [^{F64}Director] if—

- (a) he is aggrieved by the proposal of a sewerage undertaker to make a declaration under section 102 above; or
- (b) he is aggrieved by the refusal of a sewerage undertaker to make such a declaration.

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- [^{F65}(2) A person who has entered or wants to enter an agreement under section 104 may appeal to the Authority about any matter concerning the agreement (including whether it is concluded, its terms and its operation).]
- (3) The time for the making of an appeal under subsection (1) above by the owner of any sewer [^{F66}, lateral drain] or sewage disposal works shall be—
- (a) in the case of an appeal by virtue of paragraph (a) of that subsection, any time within two months after notice of the proposal is served on that owner; and
 - (b) in the case of an appeal by virtue of paragraph (b) of that subsection, any time after receipt of notice of the undertaker's refusal or, if no such notice is given, at any time after the end of two months from the making of the application for the declaration.
- (4) On the hearing of an appeal under this section, the [^{F64}Director] may—
- (a) in the case of an appeal under subsection (1) above, allow or disallow the proposal of the sewerage undertaker or, as the case may be, make any declaration which the sewerage undertaker might have made; or
 - (b) in the case of an appeal under subsection (2) above—
 - (i) uphold the refusal of the undertaker to grant the application or to modify the terms offered; or
 - (ii) on behalf of the undertaker, refuse the application or enter into any agreement into which the undertaker might have entered on the application;
 and any declaration made under paragraph (a) above shall have the same effect as if it had been made by the undertaker in question.
- (5) Where the [^{F64}Director] makes a declaration under subsection (4)(a) above, he may, if he thinks fit—
- (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that his declaration shall not take effect unless any conditions so specified are accepted.
- (6) Where the [^{F64}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.
- (7) The [^{F64}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; 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

F63 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](#))

F64 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

Status: Point in time view as at 18/02/2016.

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

- F65** 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)
- F66** 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)

[^{F67}**105Z** **Adoption at a future date: orders by Authority** **E+W**]

- (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.
- (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;

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- (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.

Textual Amendments

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), **ss. 11(3)**, 94(3); S.I. 2015/1938, art. 2(c)(ii)

105ZB Variation and termination of section 104 agreements E+W

- (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—

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- (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;
 - (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

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), [ss. 11\(3\)](#), 94(3); [S.I. 2015/1938](#), art. 2(c)(ii)

105ZC Codes in respect of section 104 agreements **E+W**

- (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;

Status: Point in time view as at 18/02/2016.

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- (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.
- (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

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), [ss. 11\(3\), 94\(3\)](#); [S.I. 2015/1938](#), art. 2(c)(ii)

105ZD Codes under section 105ZC: procedure **E+W**

- (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.

Status: Point in time view as at 18/02/2016.

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- (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.
- (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

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), **ss. 11(3)**, 94(3); S.I. 2015/1938, art. 2(c)(ii)

105ZE Codes under section 105ZC: minor or urgent revisions **E+W**

- (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).

Status: Point in time view as at 18/02/2016.

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- (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

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), **ss. 11(3)**, 94(3); S.I. 2015/1938, art. 2(c)(ii)

105ZF Rules about charges in connection with a section 104 agreement E+W

- (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;
 - (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.

Status: Point in time view as at 18/02/2016.

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- (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

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), **ss. 11(3), 94(3)**; S.I. 2015/1938, art. 2(c)(ii)

105ZG Rules under section 105ZF: procedure **E+W**

- (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.

Status: Point in time view as at 18/02/2016.

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(8) This section is subject to section 105ZH.

Textual Amendments

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), **ss. 11(3)**, 94(3); S.I. 2015/1938, art. 2(c)(ii)

105ZH Rules under section 105ZF: minor or urgent revisions **E+W**

- (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.
- (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

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), **ss. 11(3)**, 94(3); S.I. 2015/1938, art. 2(c)(ii)

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105ZI Rules under section 105ZF: guidance **E+W**

- (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.
- (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

F67 Ss. 105ZA-105ZI inserted (18.12.2015 for the insertion of ss. 105ZF-105ZI) by [Water Act 2014](#) (c. 21), [ss. 11\(3\)](#), 94(3); [S.I. 2015/1938](#), art. 2(c)(ii)

[^{F68}105A Schemes for the adoption of sewers, lateral drains and sewage disposal works **E** **+W**

- (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.

Status: Point in time view as at 18/02/2016.

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- (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;
 - (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

F68 Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; [S.I. 2007/1021](#), **art. 2(b)**

[^{F69}105B Adoption schemes: appeals **E+W**

- (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.

Status: Point in time view as at 18/02/2016.

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- (3) The grounds upon which a person may appeal are—
- (a) in a subsection (1)(a) case, that the relevant duty is not owed in relation to the sewer, lateral drain or sewage disposal works, or that the making of the proposed declaration would be seriously detrimental to him;
 - (b) in a subsection (1)(b) case, that the relevant duty is owed in relation to the sewer, lateral drain or sewage disposal works; or
 - (c) any other prescribed ground.
- (4) An appeal under subsection (1)(a) above shall be made within two months after notice of the proposal is—
- (a) served on the owner of the sewer, lateral drain or sewage disposal works; or
 - (b) published in accordance with section 102(4) above as modified by section 105A(6) above,
- (or, if both occur, within two months after whichever is the later).
- (5) An appeal under subsection (1)(b) above shall be made within such period as is specified in the scheme (not being less than two months).
- (6) On the hearing of an appeal under subsection (1) above, the Authority may—
- (a) in a subsection (1)(a) case, allow or disallow the proposal of the sewerage undertaker; or
 - (b) in a subsection (1)(b) case, determine that the undertaker was not under the relevant duty in relation to the sewer, lateral drain or sewage disposal works in question,
- or, in either case, make any declaration that the sewerage undertaker might have made, unless the proposal is disallowed.
- (7) If, in a subsection (1)(a) case, the Authority finds that the making of the proposed declaration would be seriously detrimental to the appellant, it shall disregard any duty on the part of the sewerage undertaker to make the proposal for the purpose of determining whether to allow or disallow the proposal.
- (8) If, in a subsection (1)(a) case, the Authority disallows the proposal of the sewerage undertaker, the scheme pursuant to which it was made shall have effect as if there were no duty under section 105A(4) above on the sewerage undertaker in relation to the sewer, lateral drain or sewage disposal works in question.
- (9) Where the Authority makes a declaration under subsection (6) above, it may, if it thinks fit—
- (a) specify conditions, including conditions as to the payment of compensation by the sewerage undertaker; and
 - (b) direct that its declaration shall not take effect unless any conditions so specified are accepted.
- (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.]

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Textual Amendments

F69 Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; S.I. 2007/1021, **art. 2(b)**

[^{F70} **105C** Adoption schemes: supplementary **E+W**]

- (1) The Secretary of State may vary any scheme, or revoke it.
- (2) Before making regulations or any scheme under section 105A above, and before amending or revoking the regulations or varying or revoking a scheme, the Secretary of State shall consult—
 - (a) each sewerage undertaker which would be affected;
 - (b) the Authority;
 - (c) the Council;
 - (d) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State shall publish each scheme he makes, and any such scheme as varied, in the way he considers best for the purpose of bringing it to the attention of those likely to be affected by it.]

Textual Amendments

F70 Ss. 105A-105C inserted (1.4.2007) by [Water Act 2003 \(c. 37\)](#), **ss. 98, 105(3)**; S.I. 2007/1021, **art. 2(b)**

Communication of drains and private sewers with public sewers

106 Right to communicate with public sewers. **E+W**

- ^{F71}[(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.]

- [^{F72}(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.]

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- (2) Subject to the provisions of Chapter III of this Part, nothing in subsection (1) above shall entitle any person—
 - (a) to discharge directly or indirectly into any public sewer—
 - (i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or
 - (ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment; or
 - (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—
 - (i) foul water into a sewer provided for surface water; or
 - (ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or
 - (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.
- (3) A person desirous of availing himself of his entitlement under this section shall give notice of his proposals to the sewerage undertaker in question.
- (4) At any time within twenty-one days after a sewerage undertaker receives a notice under subsection (3) above, the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer
 - ^{F73}(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.
- ^{F74}(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 ^{F75}(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) ^{F76}or (5A)] above,may, on the application of that person, be determined by ^{F77}the Director under section 30A above]^{F78}(and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above).]
- ^{F79}(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—

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- (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 [^{F80}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 ^{M6}Factories Act 1961.

Textual Amendments

- F71** 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](#)
- F72** 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](#))
- F73** 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](#))
- F74** 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](#))
- F75** 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](#))
- F76** 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](#))
- F77** 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](#)
- F78** 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](#))
- F79** 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](#)
- F80** 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)

- C2** 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))
- C3** S. 106 applied (14.9.2006) by [The Borough of Poole \(Poole Harbour Opening Bridges\) Order 2006 \(S.I. 2006/2310\), art. 14\(2\)\(4\)](#)
- C4** S. 106 applied (3.7.2006) by [The Port of Blyth \(Battleship Wharf Railway\) Order 2006 \(S.I. 2006/1518\), art. 10\(2\)](#)
- C5** S. 106 applied (25.11.2005) by [The Docklands Light Railway \(Capacity Enhancement\) Order 2005 \(S.I. 2005/3105\), art. 19\(2\)](#)
- C6** 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](#))
- C7** 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\(2\)](#))
- C8** 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\(2\)](#))
- C9** 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\(2\)](#))
- C10** 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\(2\)](#)

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- C11 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)
- C12 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)
- C13 S. 106 applied (22.8.2013) by The Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013/1933), arts. 1, **13(2)**
- C14 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)
- C15 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))
- C16 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))
- C17 S. 106 applied (7.5.2014) by The National Grid (North London Reinforcement Project) Order 2014 (S.I. 2014/1052), arts. 1, **17(2)**
- C18 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)
- C19 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)
- C20 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)
- C21 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)**
- C22 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)**
- C23 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)
- C24 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)
- C25 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)**
- C26 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)**
- C27 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)
- C28 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)
- C29 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)
- C30 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)
- C31 S. 106 applied (7.1.2015) by The Willington C Gas Pipeline Order 2014 (S.I. 2014/3328), arts. 1, **14(2)**
- C32 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))
- C33 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)**
- C34 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)
- C35 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)

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- C36** 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))
- C37** S. 106 applied (9.6.2015) by The White Moss Landfill Order 2015 (S.I. 2015/1317), arts. 1, **9(2)** (with art. 5)
- C38** 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)**
- C39** 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)
- C40** 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)
- C41** S. 106 applied (14.8.2015) by The Progress Power (Gas Fired Power Station) Order 2015 (S.I. 2015/1570), arts. 1, **15(2)**
- C42** S. 106 applied (14.8.2015) by The Hirwaun Generating Station Order 2015 (S.I. 2015/1574), arts. 1, **14(2)**
- C43** 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)
- C44** S. 106 applied (19.11.2015) by The Ferrybridge Multifuel 2 Power Station Order 2015 (S.I. 2015/1832), arts. 1(2), **12(2)**
- C45** S. 106 applied (16.12.2015) by The Network Rail (Tinsley Chord) Order 2015 (S.I. 2015/1876), arts. 1, **8(2)**
- C46** 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)
- C47** 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)**
- C48** 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)
- C49** 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)
- C50** S. 106(8) restricted (18.12.1996) by 1996 c. 61, s. 38, **Sch. 10 para. 13**
- C51** S. 106(8) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), s. 40, **Sch. 14 para. 16**
- C52** 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**

Marginal Citations

M6 1961 c. 34.

^[F81] **106B Requirement to enter into agreement before construction** E+W

- (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

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- (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.]

Textual Amendments

F81 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.** **E+W**

- (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 [^{F82}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.
- (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—

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- (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.
- ^{F83}[(4A) Any dispute between a sewerage undertaker and any other person as to—
- (a) whether the undertaker's estimate of the cost of works given under subsection (3)(b)(i) above is reasonable,
 - (b) whether any requirement of security for the payment of the cost of works was reasonably made by the undertaker, or
 - (c) whether any excess is repayable, or any expenses are recoverable, by the undertaker under subsection (4) above, or the amount of any such excess or expenses,
- may be referred to the Director for determination under section 30A above by either party to the dispute.]
- (5) Sections 291, 293 and 294 of the ^{M7}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.

Textual Amendments

- F82** 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
- F83** 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

Marginal Citations

- M7** 1936 c. 49.

108 Communication works by person entitled to communication. E+W

- (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

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- (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,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. E+W

- (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 ^{M8}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

M8 1936 c. 49.

Connections between public sewers

110 Determination of disputes with respect to cross boundary sewers. E+W

- (1) Where any part of a sewer is vested in a sewerage undertaker by virtue of section 70 of the ^{M9}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,

Status: Point in time view as at 18/02/2016.

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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.
- (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

M9 1989 c. 15.

[110A ^{F84} New connections with public sewers. **E+W**

- (1) Where, on the application of any qualifying person—
 - (a) it appears to the Director that it is necessary or expedient for the purposes of this Part that the sewerage undertaker specified in the application (“the established undertaker”) should permit a main connection into his sewerage system, and
 - (b) the Director is satisfied that the making of such a connection cannot be secured by agreement,
 the Director may by order require the established undertaker to allow the connection for such period and on such terms and conditions as may be provided in the order.
- (2) In this section “qualifying person” means—
 - (a) a sewerage undertaker; or
 - (b) a person who has made an application for an appointment or variation under section 8 above which has not been determined.
- (3) In subsection (1) above a “main connection” means a connection—
 - (a) between a sewer or disposal main and a sewer or disposal main; or
 - (b) a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works.
- (4) Where the application is made by a person who is not a sewerage undertaker at the time when the application is made, an order made under this section in response to that application shall be expressed not to come into force until the applicant becomes a sewerage undertaker for the area specified in the order, or for an area which includes that area.
- (5) Subject to subsection (4) above, an order under this section shall have effect as an agreement between the established undertaker and the applicant but may be varied or revoked by a subsequent order made by the Director on the application of either party to the agreement, as well as by agreement between the parties.

^{F85}(6) The Authority shall not make an order under this section unless it has first consulted—

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- (a) the Environment Agency, where the proposed main connection would discharge to a sewerage system that would dispose of that discharge to any controlled waters in England;
 - (b) the NRBW, where the proposed main connection would discharge to a sewerage system that would dispose of that discharge to any controlled waters in Wales.]
- (7) In exercising his functions under this section, the Director shall have regard to the desirability of—
- (a) facilitating effective competition within the sewerage services industry;
 - (b) the existing undertaker’s recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the existing undertaker’s being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the existing undertaker to meet its existing obligations, or likely future obligations, to provide such services.]

Textual Amendments

- F84** S. 110A inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 45](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F85** S. 110A(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. 238](#) (with Sch. 7)

Provisions protecting sewerage system

111 Restrictions on use of public sewers. **E+W**

- (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 [^{F86}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.

Status: Point in time view as at 18/02/2016.

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- (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.
- (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^{M10}Petroleum (Consolidation) Act 1928, gives off an inflammable vapour at a temperature of less than [^{F87}twenty-three degrees Celsius] .

Textual Amendments

F86 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\(d\)](#)

F87 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)

C53 S. 111 amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. I para. 8](#) (with ss. 42, 46).

C54 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](#))

Marginal Citations

M10 [1928 c. 32.](#)

112 Requirement that proposed drain or sewer be constructed so as to form part of general system. **E+W**

- (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,

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- 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 ^{F88}Director].
- (3) On an appeal under subsection (2) above with respect to any requirements, the ^{F88}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.
- (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.
- ^{F89}(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

F88 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

F89 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)

C55 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))

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113 Power to alter drainage system of premises in area. E+W

- (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—
- (a) is equally effectual for the drainage of the premises; and
 - (b) communicates with a public sewer.
- (3) A sewerage undertaker which proposes to carry out any work under this section shall give notice of its proposals to the owner of the premises in question.
- (4) If the owner of the premises is aggrieved by the proposals, whether as regards the position or the sufficiency of the drain or sewer proposed to be provided for the drainage of the premises, he may ^{F90}refer the matter to the Director for determination under section 30A above].
- ^{F91}(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

F90 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

F91 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)

C56 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](#)).

C57 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](#))

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114 Power to investigate defective drain or sewer. **E+W**

- (1) Where it appears to a sewerage undertaker that there are reasonable grounds for believing—
 - (a) that any drain connecting with a public sewer, or any private sewer so connecting, is in such a condition as to be injurious or likely to cause injury to health or as to be a nuisance; or
 - (b) that any such drain or private sewer is so defective as to admit subsoil water, the undertaker may examine the condition of the drain or sewer and, for that purpose, may apply any test, other than a test by water under pressure and, if the undertaker deems it necessary, open the ground.
- (2) If on examination the drain or sewer is found to be in proper condition, the undertaker shall, as soon as possible, reinstate any ground which has been opened by it and make good any damage done by the undertaker.

[^{F92}Sustainable drainage

Textual Amendments

F92 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 **E+W**

- (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. **E+W**

- (1) Subject to the provisions of this section, a relevant authority and a sewerage undertaker may agree that—

Status: Point in time view as at 18/02/2016.

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- (a) any drain or sewer which is vested in the authority in their capacity as a highway authority may, upon such terms as may be agreed, be used by the undertaker for the purpose of conveying surface water from premises or streets;
 - (b) any public sewer vested in the undertaker may, upon such terms as may be agreed, be used by the authority for conveying surface water from roads repairable by the authority.
- (2) Where a sewer or drain with respect to which a relevant authority and a sewerage undertaker propose to make an agreement under this section discharges, whether directly or indirectly, into the sewers or sewage disposal works of another sewerage undertaker, the agreement shall not be made without the consent of that other undertaker.
- (3) Subject to subsection (4) below, a consent given by a sewerage undertaker for the purposes of subsection (2) above may be given on such terms as that undertaker thinks fit.
- (4) Neither a relevant authority nor a sewerage undertaker shall—
- (a) unreasonably refuse to enter into an agreement for the purposes of this section; or
 - (b) insist unreasonably upon terms unacceptable to the other party;
- and a sewerage undertaker shall not unreasonably refuse to consent to the making of such an agreement or insist unreasonably upon terms unacceptable to either party.
- (5) Any question arising under this section as to whether or not any authority or undertaker is acting 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 ^{M11}Highways Act 1980.
- (8) Part XII of the ^{M12}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

M11 1980 c. 66.

M12 1936 c. 49.

Status: Point in time view as at 18/02/2016.

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116 Power to close or restrict use of public sewer. **E+W**

- (1) Subject to subsection (3) below, a sewerage undertaker may discontinue and prohibit the use of any public sewer which is vested in the undertaker.
- (2) A discontinuance or prohibition under this section may be for all purposes, for the purpose of foul water drainage or for the purpose of surface water drainage.
- (3) Before any person who is lawfully using a sewer for any purpose is deprived under this section by a sewerage undertaker of the use of the sewer for that purpose, the undertaker shall—
 - (a) provide a sewer which is equally effective for his use for that purpose; and
 - (b) at the undertaker's own expense, carry out any work necessary to make that person's drains or sewers communicate with the sewer provided in pursuance of this subsection.
- ^{F93}(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

F93 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](#)

^{F94}[Complaints

Textual Amendments

F94 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](#)

^{F95}**116A Procedures for dealing with complaints.** **E+W**

- (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 [^{F96}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.

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- (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
 - (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

- F95** 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
- F96** 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(l)(v)(aa) (with Sch. para. 8)

Interpretation of Chapter II

117 Interpretation of Chapter II. **E+W**

- (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;

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- (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.
 - (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 ^{M13}Water Resources Act 1991 [^{F97}or the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675)] ; or
 - (b) for the purpose of conveying foul water into any natural or artificial stream, watercourse, canal, pond or lake, without the water having been so treated as not to affect prejudicially the purity and quality of the water in the stream, watercourse, canal, pond or lake.
 - (6) A sewerage undertaker shall so carry out its functions under sections 102 to 105, 112, 115 and 116 above as not to create a nuisance.

Textual Amendments

F97 Words in s. 117(5)(a) inserted (1.1.2015) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 97](#); [S.I. 2014/3320](#), art. 2(2)(e)(ii)

Marginal Citations

M13 1991 c. 57.

Status:

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