



# Water Act 2014

## 2014 CHAPTER 21

### PART 1

#### WATER INDUSTRY

#### CHAPTER 1

##### WATER SUPPLY LICENCES AND SEWERAGE LICENCES

##### *Expansion of water supply licensing*

### 1 Types of water supply licence and arrangements with water undertakers

(1) For section 17A of the Water Industry Act 1991 there is substituted—

#### **“17A Water supply licences**

- (1) The Authority may grant to a person a licence in respect of the use of the supply system of a water undertaker (a “water supply licence”).
- (2) A water supply licence may give the holder of the licence one or more of the following authorisations and combination of authorisations—
  - (a) a retail authorisation;
  - (b) a wholesale authorisation;
  - (c) a restricted retail authorisation;
  - (d) a restricted retail authorisation and a supplementary authorisation.
- (3) Schedule 2A makes provision as to the authorisations (including their operation in England and Wales).
- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 3.

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- (5) The Authority may exercise the power to grant a water supply licence only in accordance with a general authorisation given by the Secretary of State.
- (6) Before giving a general authorisation as regards the Authority, the Secretary of State must consult the Welsh Ministers.
- (7) References in this Act to a water supply licensee are references to a person that is the holder for the time being of a water supply licence.

### **17AA Water supply licences: restrictions on grants**

- (1) Before the Authority grants a water supply licence giving a wholesale authorisation, it must consult—
    - (a) the Secretary of State;
    - (b) the Chief Inspector of Drinking Water;
    - (c) the Environment Agency;
    - (d) the NRBW.
  - (2) Before the Authority grants a water supply licence giving a supplementary authorisation, it must consult—
    - (a) the Secretary of State;
    - (b) the Chief Inspector of Drinking Water;
    - (c) the Environment Agency;
    - (d) the Welsh Ministers;
    - (e) the Chief Inspector of Drinking Water for Wales if there is one;
    - (f) the NRBW.
  - (3) A water supply licence may not be granted to a water undertaker.
  - (4) A water supply licence may not be granted to a person unless that person is a limited company.
  - (5) The restriction in subsection (4) does not apply if the water supply licence gives only—
    - (a) a retail authorisation,
    - (b) a restricted retail authorisation, or
    - (c) a retail authorisation and a restricted retail authorisation.”
- (2) After Schedule 2 to the Water Industry Act 1991 there is inserted the Schedule set out in Schedule 1.
  - (3) Schedule 2 (which amends Chapter 2A of Part 3 of the Water Industry Act 1991 which relates to water undertakers' duties to enable operations of water supply licensees) has effect.

#### **Commencement Information**

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| <b>I1</b> | S. 1(1) in force at 1.1.2016 for specified purposes by S.I. 2015/1938, art. 3(a)(i) (with art. 4) |
| <b>I2</b> | S. 1(2) in force at 1.1.2016 by S.I. 2015/1938, art. 3(a)(ii)                                     |
| <b>I3</b> | S. 1(3) in force at 1.9.2015 for specified purposes by S.I. 2015/1469, art. 3(a)                  |
| <b>I4</b> | S. 1(3) in force at 1.9.2015 for specified purposes by S.I. 2015/773, art. 3(a) (with art. 5)     |

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VALID FROM 01/04/2017

## 2 The supply system of a water undertaker

- (1) Section 17B of the Water Industry Act 1991 (guidance and interpretation) is amended as follows.
- (2) After subsection (4) there is inserted—
  - “(4A) In this Chapter, references to the supply system of a water undertaker are, in the case of an undertaker whose area is wholly or mainly in England, references to the system comprising the following—
    - (a) any reservoirs and other places of storage and any treatment works developed or maintained by the water undertaker for the purpose of complying with its duty under section 37, and
    - (b) any water mains and other pipes which it is the water undertaker's duty to develop and maintain by virtue of section 37.”
- (3) In subsection (5) (interpretation of references to the supply system of a water undertaker), after “undertaker are” there is inserted “, in the case of an undertaker whose area is wholly or mainly in Wales, ”.

## 3 The threshold requirement

- (1) The Secretary of State may by order made by statutory instrument repeal section 17A(3)(b) of the Water Industry Act 1991 (the threshold requirement affecting premises in England and Wales), so far as it relates to premises supplied using the supply system of a water undertaker whose area is wholly or mainly in England.
- (2) The Welsh Ministers may by order made by statutory instrument repeal section 17A(3)(b) of the Water Industry Act 1991, so far as it relates to premises supplied using the supply system of a water undertaker whose area is wholly or mainly in Wales.
- (3) The references in subsections (1) and (2) to section 17A of the Water Industry Act 1991 are to the section 17A that is to be repealed (by substitution) by section 1 of this Act.
- (4) The Welsh Ministers may by order made by statutory instrument repeal paragraph 7(b) of Schedule 2A to the Water Industry Act 1991 (inserted by Schedule 1 to this Act).
- (5) An order under subsection (1), (2) or (4) may make such amendments of the Water Industry Act 1991 and this Act as are necessary or appropriate in consequence of the repeal made by the order.
- (6) A statutory instrument containing an order to be made by the Secretary of State under subsection (1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) A statutory instrument containing an order to be made by the Welsh Ministers under subsection (2) or (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

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### *Introduction of sewerage licences*

#### **4 Types of sewerage licence and arrangements with sewerage undertakers**

(1) After section 17B of the Water Industry Act 1991 there is inserted—

##### **“17BA Sewerage licences**

- (1) The Authority may grant to a person a licence in respect of the use of the sewerage system of a sewerage undertaker whose area is wholly or mainly in England (a “sewerage licence”).
- (2) A sewerage licence may give the holder of the licence one or more of the following—
  - (a) a retail authorisation;
  - (b) a wholesale authorisation;
  - (c) a disposal authorisation.
- (3) Schedule 2B makes provision as to the authorisations.
- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 4.
- (5) The Authority may exercise the power to grant a sewerage licence only in accordance with a general authorisation given by the Secretary of State.
- (6) References in this Act to a sewerage licensee are references to a person that is the holder for the time being of a sewerage licence.
- (7) References in this Chapter to the sewerage system of a sewerage undertaker are references to the system comprising—
  - (a) the system of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that the undertaker is required to provide by section 94, and
  - (b) the lateral drains that the undertaker is required to maintain by section 94.

##### **17BB Sewerage licences: restrictions on grants**

- (1) The Authority must consult the Secretary of State, the Environment Agency and the NRBW before granting a licence that gives—
  - (a) a wholesale authorisation, or
  - (b) a disposal authorisation.
- (2) A sewerage licence granted to a sewerage undertaker may not give the holder—
  - (a) a retail authorisation, or
  - (b) a wholesale authorisation.
- (3) A sewerage licence may not be granted to a person unless that person is a limited company.

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- (4) The restriction in subsection (3) does not apply if the sewerage licence gives only a retail authorisation.”
- (2) After Schedule 2A to the Water Industry Act 1991 (inserted by section 1) there is inserted the Schedule set out in Schedule 3.
- (3) Schedule 4 (which amends Part 4 of the Water Industry Act 1991 to add a Chapter 2A relating to arrangements between sewerage undertakers and sewerage licensees) has effect.

#### Commencement Information

- I5** S. 4(1) in force at 1.1.2016 for specified purposes by S.I. 2015/1938, **art. 3(b)(i)**
- I6** S. 4(2) in force at 1.1.2016 by S.I. 2015/1938, **art.**
- I7** S. 4(3) in force at 1.9.2015 for specified purposes by S.I. 2015/773, **art. 3(b)** (with art. 5)
- I8** S. 4(3) in force at 1.9.2015 for specified purposes by S.I. 2015/1469, **art. 3(b)**

PROSPECTIVE

#### *Application as regards Wales*

### **5 Water supply and sewerage licensing changes applied as regards Wales**

Schedule 5 (which contains amendments in connection with applying licensing changes to relation to relevant undertakers whose areas are wholly or mainly in Wales) has effect.

#### *Licensing arrangements between England and Wales and Scotland*

### **6 Arrangements with the Water Industry Commission for Scotland**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) After section 17F (procedure for granting and varying licences) there is inserted—

#### **“17FA Applications forwarded by the Water Industry Commission for Scotland**

- (1) The Secretary of State may by regulations make provision about—
- (a) treating a 2005 Act application for the grant of a water services licence under section 6 of the 2005 Act as being also an application under section 17F for the grant of a water supply licence giving only a retail authorisation or a restricted retail authorisation or both;
- (b) treating a 2005 Act application for the grant of a sewerage services licence under section 6 of the 2005 Act as being also an application under section 17F for the grant of a sewerage licence giving only a retail authorisation.
- (2) The regulations may in particular make provision about—

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- (a) the circumstances in which, and the conditions subject to which, a 2005 Act application is to be treated as an application under section 17F for a water supply or sewerage licence giving a particular authorisation or particular authorisations;
  - (b) the time at which an application is to be treated as having been made;
  - (c) the processing of an application by the Authority.
- (3) Provision under subsection (2)(a) may require a 2005 Act application that is forwarded to the Authority—
- (a) to contain, or to be accompanied by, such information or information of such description as is specified by the regulations;
  - (b) to be accompanied by such documents or documents of such descriptions as are specified by the regulations;
  - (c) to be accompanied by a fee, or a fee of a description, specified by the regulations.
- (4) In this section and section 17FB—
- “the 2005 Act” means the Water Services etc. (Scotland) Act 2005;
  - “2005 Act application” means an application under paragraph 1 of Schedule 2 to the 2005 Act.

### **17FB Applications forwarded to the Water Industry Commission for Scotland**

- (1) If the conditions in subsection (2) are satisfied, the Authority must—
- (a) forward to the Commission a copy of an application under section 17F for the grant of a water supply licence or sewerage licence, and
  - (b) send to the Commission such information and such fee as appear to the Authority to be required in order that the application may be treated by the Commission as a 2005 Act application for the grant of—
    - (i) a water services licence under section 6 of the 2005 Act, or
    - (ii) a sewerage services licence under section 6 of the 2005 Act, as the case may be.
- (2) The conditions are that—
- (a) the Authority is requested to do so by the applicant;
  - (b) the application under section 17F appears to the Authority to be an application that would be treated by the Commission as a 2005 Act application for the grant of—
    - (i) a water services licence under section 6 of the 2005 Act, or
    - (ii) a sewerage services licence under section 6 of the 2005 Act, as the case may be;
  - (c) the applicant has given the Authority—
    - (i) such information as is mentioned in subsection (1)(b), and
    - (ii) a means of sending to the Commission such fee as is mentioned in subsection (1)(b).
- (3) The Authority must—
- (a) forward a copy of the application, and

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(b) send such information and fee as are mentioned in subsection (1)(b), before the end of the agreed period for an application of that description.

(4) In this section—

“the agreed period”, in relation to an application under section 17F of a particular description, means the period agreed between the Authority and the Commission as the period applying to an application of that description for the purposes of subsection (3);

“the Commission” means the Water Industry Commission for Scotland.”

#### Commencement Information

- I9** S. 6(1) in force at 18.12.2015 for specified purposes by S.I. 2015/1938, art. 2(a)(i)  
**I10** S. 6(2) in force at 18.12.2015 for specified purposes by S.I. 2015/1938, art. 2(a)(ii)

## 7 Arrangements with the Water Services Regulation Authority

(1) The Water Services etc. (Scotland) Act 2005 is amended as follows.

(2) In Schedule 2 (procedure for granting licences), after paragraph 1 there is inserted—

### “Applications forwarded by the Water Services Regulation Authority

1A (1) The Scottish Ministers may by order make provision about—

- (a) treating an application under section 17F of the 1991 Act for the grant of a water supply licence giving a retail authorisation or a restricted retail authorisation as being also an application under paragraph 1 for the grant of a water services licence;
- (b) treating an application under section 17F of the 1991 Act for the grant of a sewerage licence giving a retail authorisation as being also an application under paragraph 1 for the grant of a sewerage services licence.

(2) The order may in particular make provision about—

- (a) the circumstances in which, and the conditions subject to which, an application under section 17F of the 1991 Act is to be treated as an application under paragraph 1 for a water services licence or a sewerage services licence;
- (b) the time at which an application is to be treated as having been made;
- (c) the processing of an application by the Commission.

(3) Provision under sub-paragraph (2)(a) may require an application under section 17F of the 1991 Act that is forwarded to the Commission—

- (a) to include, or be accompanied by, information prescribed by the order;
- (b) to be accompanied by a fee, or a fee of a description, prescribed by the order.

(4) In this paragraph and paragraph 1B “the 1991 Act” means the Water Industry Act 1991.

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### **Applications forwarded to the Water Services Regulation Authority**

1B (1) If the conditions in sub-paragraph (2) are satisfied, the Commission must—

- (a) forward to the Authority a copy of an application under paragraph 1 for the grant of a water services licence or sewerage services licence;
- (b) send to the Authority such information, documents and fee as appear to the Commission to be required in order that the application may be treated by the Authority as an application under section 17F of the 1991 Act for the grant of—
  - (i) a water supply licence giving a retail authorisation or a restricted retail authorisation or both, or
  - (ii) a sewerage licence giving a retail authorisation,
 as the case may be.

(2) The conditions are that—

- (a) the Commission is requested to do so by the applicant;
- (b) the application under paragraph 1 appears to the Commission to be an application that would be treated by the Authority as an application under section 17F of the 1991 Act for the grant of—
  - (i) a water supply licence giving a retail authorisation or a restricted retail authorisation or both, or
  - (ii) a sewerage licence giving a retail authorisation,
 as the case may be;
- (c) the applicant has given the Commission—
  - (i) such information and documents as are mentioned in sub-paragraph (1)(b), and
  - (ii) a means of sending to the Authority such fee as is mentioned in sub-paragraph (1)(b).

(3) The Commission must—

- (a) forward a copy of the application, and
- (b) send such information, documents and fee as are mentioned in sub-paragraph (1)(b),

before the end of the agreed period for an application of that description.

(4) In this paragraph—

“the agreed period”, in relation to an application under paragraph 1 of a particular description, means the period agreed between the Commission and the Authority as the period applying to an application of that description for the purposes of sub-paragraph (3);

“the Authority” means the Water Services Regulation Authority.”

(3) In section 6 (grant of water services and sewerage services licences)—

- (a) in subsection (1), for “paragraphs 1 and 2” there is substituted “ paragraphs 1, 1A and 2 ”;



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- (b) in subsection (3), for “paragraphs 1 and 2” there is substituted “ paragraphs 1, 1A and 2 ”.
- (4) In section 34 (orders and regulations), in subsection (3)(c), after “or (4)” there is inserted “ , 1A(1) ”.

#### Commencement Information

**I11** S. 7(1)(2) in force at 20.11.2015 for specified purposes by S.S.I. 2015/360, art. 2(a)

**I12** S. 7(3)(4) in force at 20.11.2015 by S.S.I. 2015/360, art. 2(b)

## CHAPTER 2

### WATER AND SEWERAGE UNDERTAKERS

#### *Arrangements between relevant undertakers*

## 8 Bulk supply of water by water undertakers

- (1) For sections 40 and 40A of the Water Industry Act 1991 (agreements for the bulk supply of water etc) there is substituted—

#### “40 Bulk supplies

- (1) This section applies where—
- a qualifying person requests a water undertaker to provide a supply of water in bulk to the qualifying person, or
  - a water undertaker proposes such an arrangement;
- and references in this section to the supplier are references to the water undertaker who is to provide the supply of water.
- (2) In this section “qualifying person” means—
- a water undertaker;
  - a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the supplier, the Authority may—
- if it appears to the Authority that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the supplier should give a supply of water in bulk to the qualifying person, and
  - if the Authority is satisfied that the supplier and qualifying person cannot reach agreement within a reasonable time,
- by order require the supplier to give and the qualifying person to take a supply of water in bulk for such period and on such terms and conditions as may be specified in the order.
- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency, in particular about whether the proposed supply of water

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would secure an efficient use of water resources, taking into account the effect on the environment of the proposed supply.

- (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the supplier and the qualifying person.
- (6) If the Authority makes an order under subsection (3) that affects a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
  - (a) the person becomes a water undertaker for the area specified in the order, or
  - (b) the person becomes a water undertaker for an area that includes the area specified in the order (in the case of a water undertaker applying for a variation).
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the supply of water in bulk by a water undertaker to a qualifying person, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement for the supply of water in bulk by a water undertaker to a qualifying person, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In exercising its functions under this section, the Authority must have regard to the desirability of—
  - (a) facilitating effective competition within the water supply industry;
  - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.
- (10) In this section and section 40A “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or section 40A(1) which would result in, or which would vary or terminate, a bulk supply agreement, means—
  - (a) the Environment Agency, in a case where all parties to the bulk supply agreement are or would be—
    - (i) a water undertaker whose area is wholly in England, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;

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- (b) the NRBW, in a case where all parties to the bulk supply agreement are or would be—
    - (i) a water undertaker whose area is wholly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) both the Environment Agency and the NRBW, in any other case.
- (11) In this section and sections 40A to 40J “bulk supply agreement” means an agreement with one or more water undertakers for the supply of water in bulk and includes—
- (a) an order under subsection (3) which is deemed to be an agreement by virtue of subsection (5), and
  - (b) any agreement which has been varied by order under section 40A(1).

#### **40A Variation and termination of bulk supply agreements**

- (1) On the application of any party to a bulk supply agreement, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, that the bulk supply agreement should be varied or terminated, and
  - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement within a reasonable time,
- by order vary or terminate the bulk supply agreement.
- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency, in particular about whether the proposed variation or termination of the bulk supply agreement would secure an efficient use of water resources, taking into account the effect on the environment of what is proposed.
- (3) If an order under subsection (1) is made in relation to a bulk supply agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect (as the case may be).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a bulk supply agreement, the powers conferred by—
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (6) Subsection (5)(b) does not apply to the exercise of powers in respect of conduct—
- (a) which is connected with an agreement to vary or terminate a bulk supply agreement, and

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- (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement in question and to the desirability of—
- (a) facilitating effective competition within the water supply industry;
  - (b) the supplier's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the supplier's being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water.
- (8) In this section and sections 40B to 40J—
- “qualifying person” has the meaning given by section 40;
  - “supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.

#### **40B Codes in respect of bulk supply agreements**

- (1) The Authority may issue one or more codes in respect of bulk supply agreements.
- (2) A code may make provision about—
  - (a) procedures in connection with making a bulk supply agreement;
  - (b) procedures in connection with varying or terminating a bulk supply agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 40(3) or 40A(1);
  - (d) the terms and conditions of a bulk supply agreement, including terms as to the duration of such an agreement;
  - (e) principles for determining the terms and conditions that should or should not be incorporated into a bulk supply agreement;
  - (f) the steps to be taken by the Authority in determining whether a person is complying with a code.
- (3) A code must include provision requiring persons proposing to make, vary or terminate a bulk supply agreement to consult the appropriate agency.
- (4) If the Authority considers that a water undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.

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- (6) It is the duty of a water undertaker to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make different provision for different persons or different descriptions of person.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to bulk supply agreements made before the revised code comes into force.
- (10) In this section “the appropriate agency”, in relation to a bulk supply agreement or proposed bulk supply agreement, means the body that would be consulted by the Authority under section 40(4) or 40A(2) if an order under section 40(3) or 40A(1) were being considered in relation to the agreement or proposed agreement.

#### **40C Codes under section 40B: procedure**

- (1) Before issuing a code under section 40B, the Authority must—
  - (a) prepare a draft of the proposed code under section 40B;
  - (b) consult the appropriate agency;
  - (c) consult such other persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed code.
- (3) Before a code under section 40B 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 subsection (3) “the Minister” means—
  - (a) the Secretary of State, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in England, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;

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- (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to bulk supply agreements to which—
  - (i) a person falling within paragraph (a)(i) or (ii) is party, and
  - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such bulk supply agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such bulk supply agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such bulk supply agreements as are referred to in that paragraph on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code prepared by the Authority in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (9) In this section “the appropriate agency” means—
  - (a) the Environment Agency, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(a)(i) or (ii);
  - (b) the NRBW, so far as a proposed code relates to bulk supply agreements to which all parties are persons mentioned in section 40(10)(b)(i) or (ii);
  - (c) both the Environment Agency and the NRBW, in any other case.
- (10) This section is subject to section 40D.

#### **40D Codes under section 40B: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue a revised code under section 40B 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 40C does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.

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- (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.

#### **40E Rules about charges for the supply of water in bulk**

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a bulk supply agreement.
- (2) The rules may in particular make provision about—
- (a) what types of charge may be imposed;
  - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
  - (c) principles for determining what types of charge may or may not be imposed;
  - (d) principles for determining the amount of any charge that may be imposed;
  - (e) publication of the charges that may be imposed.
- (3) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a water undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (5) The rules may—
- (a) make different provision for different water undertakers or different descriptions of water undertaker;
  - (b) make different provision for different purposes;
  - (c) make provision subject to exceptions.
- (6) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (7) The Authority must issue revised rules if—
- (a) guidance is issued under section 40I, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (8) Revised rules may include provision for applying any of their revisions to bulk supply agreements made before the revised rules come into effect.

#### **40F Rules under section 40E: provision about the reduction of charges**

- (1) Rules under section 40E may provide for the reduction of charges payable for a supply of water under a bulk supply agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
- (a) specify conditions that affect any party to a bulk supply agreement;

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

#### **40G Rules under section 40E: procedure**

- (1) Before issuing rules under section 40E, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult such persons about the proposed rules as it thinks appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (3) The Authority must have regard to guidance issued under section 40I in making rules under section 40E.
- (4) Before rules under section 40E prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (5) In subsection (4) “the Minister” means—
  - (a) the Secretary of State, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in England, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;



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- (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to bulk supply agreements to which—
  - (i) a person falling within paragraph (a)(i) or (ii) is party, and
  - (ii) a person falling within paragraph (b)(i) or (ii) is party.
- (6) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (7) This section is subject to section 40H.

#### **40H Rules under section 40E: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 40E 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 40G 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 40G.

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#### **40I Rules under section 40E: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 40E.
- (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, in relation to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in England, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (b) the Welsh Ministers, in relation to bulk supply agreements to which all parties are—
    - (i) a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a water undertaker;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to bulk supply agreements to which—
    - (i) a person falling within paragraph (a)(i) or (ii) is party, and
    - (ii) a person falling within paragraph (b)(i) or (ii) is party.

#### **40J Duty to provide information about bulk supplies**

- (1) A supplier under a bulk supply agreement must provide such information as the appropriate agency may request in relation to water supplied under the agreement.
- (2) The requirement in subsection (1) is enforceable by the Authority under section 18.

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- (3) In subsection (1) “the appropriate agency” means the body that would be consulted by the Authority under section 40A(2) if the agreement were to be varied or terminated by an order under section 40A(1).”
- (2) In sections 40A to 40J of the Water Industry Act 1991 (as substituted by subsection (1))
- (a) a reference to a bulk supply agreement includes a reference to an old bulk supply agreement, and
  - (b) a reference to a supplier, in relation to a bulk supply agreement, is to be construed accordingly.

For these purposes, an old bulk supply agreement is a bulk supply agreement within the meaning of section 40A, as that section had effect before being substituted under subsection (1).

#### Commencement Information

**I13** S. 8(1) in force at 6.4.2015 for specified purposes by [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(i\)](#) (with [art. 4](#))

**I14** S. 8(2) in force at 6.4.2015 for specified purposes by [S.I. 2015/773](#), [art. 2\(1\)\(a\)\(ii\)](#) (with [art. 4](#))

VALID FROM 01/11/2016

## 9 Main connections into sewerage systems

- (1) For section 110A of the Water Industry Act 1991 (new connections with public sewers) there is substituted—

### “110A Main connections

- (1) This section applies where—
- (a) a qualifying person requests a sewerage undertaker to permit a main connection into the established undertaker's sewerage system for the benefit of the qualifying person, or
  - (b) a sewerage undertaker proposes such an arrangement;
- and references in this section to the established undertaker are references to the sewerage undertaker who is to permit the main connection.
- (2) In this section “qualifying person” means—
- (a) a sewerage undertaker, or
  - (b) a person who has made an application for an appointment or variation under section 8 which has not been determined.
- (3) On the application of the qualifying person or the established undertaker, the Authority may—
- (a) if it appears to the Authority that it is necessary or expedient for the purposes of this Part that the established undertaker should permit a main connection into its sewerage system, and
  - (b) if the Authority is satisfied that the established undertaker and qualifying person cannot reach agreement,

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by order require the established undertaker to permit the connection for such period and on such terms and conditions as may be specified in the order.

- (4) Before making an order under subsection (3), the Authority must consult the appropriate agency.
- (5) Subject to subsection (6), an order under subsection (3) has effect as an agreement between the established undertaker and the qualifying person.
- (6) If the Authority makes an order under subsection (3) on the application of a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until—
  - (a) the person becomes a sewerage undertaker for the area specified in the order, or
  - (b) the person becomes a sewerage undertaker for an area that includes the area specified in the order (in the case of a sewerage undertaker applying for a variation).
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement with a sewerage undertaker for it to permit a main connection into its sewerage system for the benefit of a qualifying person, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with such agreement as is mentioned in subsection (7), and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In exercising its functions under this section, the Authority must have regard to the desirability of—
  - (a) facilitating effective competition within the sewerage services industry;
  - (b) the established undertaker's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the established undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (10) In this section and section 110B “the appropriate agency”, in relation to a determination whether to make an order under subsection (3) or

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section 110B(1) which would result in, or which would vary or terminate, a main connection agreement, means—

- (a) the Environment Agency, in a case where all parties to the main connection agreement are or would be—
  - (i) a sewerage undertaker whose area is wholly in England, or
  - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
- (b) the NRBW, in a case where all parties to the main connection agreement are or would be—
  - (i) a sewerage undertaker whose area is wholly in Wales, or
  - (ii) a person who would, if the person's application for an appointment or variation is determined in accordance with the application, be such a sewerage undertaker;
- (c) both the Environment Agency and the NRBW, in any other case.

(11) In this section and sections 110B to 110J—

“main connection” means—

- (a) a connection between a sewer or disposal main and a sewer or disposal main, or
- (b) a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works;

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

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

### **110B Variation and termination of main connection agreements**

- (1) On the application of any party to a main connection agreement, the Authority may—
  - (a) if it appears to the Authority that it is necessary or expedient for the purpose of this Part that the main connection agreement should be varied or terminated, and
  - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement,by order vary or terminate the main connection agreement.
- (2) Before making an order under subsection (1), the Authority must consult the appropriate agency.
- (3) If an order under subsection (1) is made in relation to a main connection agreement, the agreement—
  - (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect (as the case may be).
- (4) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.

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- (5) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a main connection agreement, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (6) Subsection (5)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement to vary or terminate a main connection agreement, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (7) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the established undertaker in complying with its obligations under the main connection agreement in question and to the desirability of—
  - (a) facilitating effective competition within the sewerage services industry;
  - (b) the established undertaker's recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
  - (c) the established undertaker's being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (8) In this section and sections 110C to 110J “established undertaker”, in relation to a sewerage agreement, means the sewerage undertaker which is required by the agreement to permit a main connection into its sewerage system.

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

- (1) The Authority may issue one or more codes in respect of main connection agreements.
- (2) A code may make provision about—
  - (a) procedures in connection with making an agreement to permit a main connection into a sewerage undertaker's sewerage system;
  - (b) procedures in connection with varying or terminating a main connection agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 110A(3) or 110B(1);
  - (d) the terms and conditions of a main connection agreement, including terms as to the duration of such an agreement;

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- (e) principles for determining the terms and conditions that should or should not be incorporated into a main connection agreement;
  - (f) the steps to be taken by the Authority in determining whether a person is complying with the code.
- (3) If the Authority considers that a sewerage undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (4) The Authority may not give a direction under subsection (3) requiring a person to enter into, vary or terminate an agreement.
- (5) It is the duty of a sewerage undertaker to comply with a direction under subsection (3), and this duty is enforceable by the Authority under section 18.
- (6) A code may make different provision for different persons or different descriptions of person.
- (7) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (8) A revised code may include provision for applying any of its revisions to main connection agreements made before the revised code comes into force.

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

- (1) Before issuing a code under section 110C, the Authority must—
- (a) prepare a draft of the proposed code under section 110C, and
  - (b) consult such persons about the proposed code as it considers appropriate.
- (2) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (3) Before a code under section 110C 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 subsection (3) “the Minister” means—
- (a) the Secretary of State, so far as a code prepared by the Authority relates to main connection agreements under which—
    - (i) the main connection into a sewerage system, or
    - (ii) each such connection,is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;
  - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to main connection agreements under which—
    - (i) the main connection into a sewerage system, or
    - (ii) each such connection,



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is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;

- (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to main connection agreements under which one main connection into a sewerage system is or would be—
  - (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
  - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.
- (6) If the power under subsection (3) is exercised to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5), it may not be exercised again in respect of such main connection agreements as are referred to in that paragraph.
- (7) If the power under subsection (3) to give a direction in respect of such main connection agreements as are referred to in paragraph (a), (b) or (c) of subsection (5) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such main connection agreements as are referred to in that paragraph on a later occasion.
- (8) A direction under subsection (3) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.

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

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



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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.

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

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

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

- (1) Rules under section 110F may provide for the reduction of charges payable under a main connection agreement where conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
  - (a) specify conditions by reference to any party to a main connection agreement;

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

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

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

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

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

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

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(b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).

(7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.

(8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.

(9) In this section “the Minister” has the meaning given by section 110H.

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

(1) The Minister may issue guidance as to the content of rules under section 110F.

(2) Before issuing the guidance, the Minister must—

- (a) prepare a draft of the proposed guidance;
- (b) consult the relevant persons about the draft.

(3) The relevant persons are—

- (a) the Welsh Ministers;
- (b) the Secretary of State;
- (c) such other persons as the Minister thinks appropriate.

(4) The Minister may from time to time revise the guidance and issue revised guidance.

(5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.

(6) The Minister must arrange for the publication of guidance issued under this section.

(7) In this section “the Minister” means—

(a) the Secretary of State, in relation to main connection agreements under which—

- (i) any main connection into a sewerage system, or
- (ii) each such connection,

is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of another such undertaker;

(b) the Welsh Ministers, in relation to main connection agreements under which—

- (i) any main connection into a sewerage system, or
- (ii) each such connection,

is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such undertaker;

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- (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to main connection agreements under which one main connection into a sewerage system is or would be—
- (i) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the benefit of a sewerage undertaker whose area is wholly or mainly in Wales, or
  - (ii) a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of a sewerage undertaker whose area is wholly or mainly in England.”
- (2) In sections 110B to 110J of the Water Industry Act 1991 (as substituted by subsection (1))—
- (a) a reference to a main connection agreement includes a reference to an old main connection agreement, and
  - (b) a reference to an established undertaker, in relation to a main connection agreement, is to be construed accordingly.
- (3) For the purposes of subsection (2)—
- (a) “old main connection agreement” means an agreement made before the coming into force of subsection (1) that is an agreement with one or more sewerage undertakers for that undertaker or each of them to permit a main connection into its sewerage system, and includes an order under old section 110A which is deemed to be an agreement by virtue of old section 110A(5);
  - (b) references to old section 110A are references to section 110A, as that section had effect before being substituted under subsection (1).

### *Agreements to adopt infrastructure*

## **10 Agreements by water undertakers to adopt infrastructure**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 51A (agreements to adopt a water main or service pipe at a future date)—
- (a) in subsection (3) (application to make an agreement under section 51A), for the words from “make an application” to the end there is substituted “ request a water undertaker to make an agreement under this section. ”;
  - (b) subsections (4) to (8) are repealed;
  - (c) after subsection (9) there is inserted—
- “(9A) The reference in subsection (9) to an agreement made under this section includes a reference to—
- (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
  - (b) an agreement which has been varied by order under section 51C(1).”
- (3) For section 51B (appeals with respect to adoption) and section 51C (financial conditions of compliance) there is substituted—

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### **“51B Adoption at a future date: orders by Authority**

- (1) This section applies where a person constructing or proposing to construct a water main or service pipe makes a request to a water undertaker under section 51A(3).
- (2) The person or the water undertaker may apply to the Authority for an order under subsection (4) if the person and the water undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the water undertaker, make an order under subsection (4) if the Authority is satisfied that—
  - (a) it is appropriate for work proposed to be done by a person other than the water undertaker to be so done, and
  - (b) the person and the water undertaker cannot reach agreement within a reasonable time.
- (4) The Authority may by order—
  - (a) require the water undertaker to give such undertakings as to the vesting of the water main or service pipe 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 51A between the person and the water undertaker.
- (6) The Authority may not, by order under subsection (4), require a water undertaker to vest in itself a water main or service pipe as regards which there is a contravention of any of the requirements of section 74 that are prescribed for the purposes of this subsection.
- (7) The Authority may not make an order under subsection (4) with respect to a water main or service pipe that is situated within the area of another water undertaker, until either—
  - (a) that other 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 water undertaker whose area is wholly or mainly in England;
  - (b) the Welsh Ministers, as regards the consent of a water 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 water main or service pipe in a water undertaker at a future date, 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).

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- (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 water main or service pipe at a future date, 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 water supply industry;
  - (b) the recovery by the water 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 water undertaker to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the water undertaker to meet its existing obligations, or likely future obligations, to supply water.

### **51C Variation and termination of section 51A agreements**

- (1) On the application of a party to a section 51A 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 51A agreement should be varied (or terminated),
  - (b) if the Authority is satisfied, in the case of an application to vary the agreement, that it is appropriate for work proposed to be done by a person other than the water 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 51A agreement.
- (2) If an order under subsection (1) is made in relation to a section 51A agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect, as the case may be.
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 51A 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—

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- (a) which is connected with an agreement to vary or terminate a section 51A 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 water undertaker in complying with its obligations under the section 51A agreement in question and to the desirability of—
- (a) facilitating effective competition within the water supply industry;
  - (b) the recovery by the water 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 water undertaker to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
  - (d) not putting at risk the ability of the water undertaker to meet its existing obligations, or likely future obligations, to supply water.
- (7) In this section and sections 51CA to 51CG “section 51A agreement” means an agreement with a water undertaker for the vesting of a water main or service pipe in a water undertaker at a future date and includes—
- (a) an order under section 51B which is deemed to be an agreement by virtue of section 51B(5), and
  - (b) any agreement which has been varied by order under subsection (1).

### **51CA Codes in respect of section 51A agreements**

- (1) The Authority must issue a code in respect of section 51A agreements.
- (2) The code may make provision about—
- (a) procedures in connection with making an agreement under section 51A;
  - (b) procedures in connection with varying or terminating a section 51A agreement;
  - (c) procedures to be followed by the Authority in determining whether to make an order under section 51B(4) or 51C(1);
  - (d) the circumstances in which it is, or is not, appropriate for work to be done by a person other than a water undertaker;
  - (e) the terms and conditions of a section 51A agreement;
  - (f) principles for determining the terms and conditions that should or should not be incorporated into a section 51A 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)(c) may in particular require the Authority to consult—
- (a) the Chief Inspector of Drinking Water;
  - (b) the Chief Inspector of Drinking Water for Wales if there is one.



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- (4) 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.
- (5) 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 water undertaker;
  - (c) constructing water mains so as to meet additional supply requirements;
  - (d) connecting new water mains or service pipes to the existing supply system of a water undertaker;
  - (e) complying with requirements of the kind referred to in section 47(2);
  - (f) the duration of a section 51A agreement.
- (6) If the Authority considers that a water 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.
- (7) The Authority may not give a direction under subsection (6) requiring a person to enter into, vary or terminate an agreement.
- (8) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (9) The code may make different provision for different persons or descriptions of person.
- (10) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (11) A revised code may include provision for applying any of its revisions to section 51A agreements made before the revised code comes into force.

#### **51CB Codes under section 51CA: procedure**

- (1) Before issuing a code under section 51CA, the Authority must—
  - (a) prepare a draft of the proposed code under section 51CA, and
  - (b) consult the relevant persons about the proposed code.
- (2) The relevant persons are—
  - (a) the Chief Inspector of Drinking Water;
  - (b) the Chief Inspector of Drinking Water for Wales if there is one;
  - (c) such other persons as the Authority considers appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (4) Before a code under section 51CA 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.

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- (5) Subsection (4) is subject to subsections (7) and (8).
- (6) In subsection (4) “the Minister” means—
  - (a) the Secretary of State, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the code relates to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) The power under subsection (4) may not be exercised more than once by the Secretary of State or the Welsh Ministers.
- (8) If the power under subsection (4) 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.
- (9) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (10) This section is subject to section 51CC.

#### **51CC Codes under section 51CA: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue a revised code under section 51CA 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 51CB does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.

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### **51CD Rules about charges in connection with a section 51A agreement**

- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a section 51A 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 water undertaker, upon declaring a water main or service pipe to be vested in the undertaker in accordance with a section 51A 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 water main or service pipe in question;
  - (b) costs that might have been incurred in providing such a water main or service pipe.
- (5) The rules may also make provision as to—
  - (a) the amount of security that may be required by a water undertaker for the purposes of any charges imposed by the water undertaker under a section 51A agreement;
  - (b) the type of security that may be required;
  - (c) the payment of interest on a sum deposited with a water undertaker by way of security.
- (6) If the Authority considers that a water 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 water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make different provision for different water 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 51CG, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.

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- (11) Revised rules may include provision for applying any of their revisions to section 51A agreements made before the revised rules come into effect.

#### **51CE Rules under section 51CD: procedure**

- (1) Before issuing rules under section 51CD, 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 water 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 51CG in making rules under section 51CD.
- (5) Before rules under section 51CD 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 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the rules relate to section 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 51CF.

#### **51CF Rules under section 51CD: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 51CD 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 51CE 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.

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- (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 51CE.

#### **51CG Rules under section 51CD: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 51CD.
- (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—

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- (a) the Secretary of State, so far as the guidance is as to the content of rules relating to section 51A agreements for the vesting of water mains or service pipes in water 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 51A agreements for the vesting of water mains or service pipes in water undertakers whose areas are wholly or mainly in Wales.”
- (4) In section 51E (sections 51A to 51D: supplementary), in subsection (2), for “In sections 51A to 51C above” there is substituted “In section 51A ”.

#### Commencement Information

- I15** S. 10(1) in force at 18.12.2015 for specified purposes by [S.I. 2015/1938, art. 2\(b\)\(i\)](#)  
**I16** S. 10(3) in force at 18.12.2015 for specified purposes by [S.I. 2015/1938, art. 2\(b\)\(ii\)](#)

## 11 Agreements by sewerage undertakers to adopt infrastructure

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 104 (agreements to adopt a sewer, drain or sewage disposal works at a future date)—
- (a) in subsection (2) (application to make an agreement under section 104), for the words from “make an application” to the end there is substituted “request a sewerage undertaker to make an agreement under this section. ”;
  - (b) subsections (3), (4) and (6A) are repealed;
  - (c) after subsection (5) there is inserted—
    - “(5A) The reference in subsection (5) to an agreement made under this section includes a reference to—
    - (a) an order under section 105ZA which is deemed to be an agreement by virtue of section 105ZA(5), and
    - (b) any agreement which has been varied by order under section 105ZB(1).”
- (3) After section 105 there is inserted—

#### “105ZA Adoption at a future date: orders by Authority

- (1) This section applies where a person mentioned in section 104(1)(a) or (b) makes a request to a sewerage undertaker under section 104(2).
- (2) The person or the sewerage undertaker may apply to the Authority for an order under subsection (4) if the person and the sewerage undertaker have not made such agreement as was requested by the person.
- (3) The Authority may, on the application of the person or the sewerage undertaker, make an order under subsection (4) if the Authority is satisfied that—

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- (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;
  - (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

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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.

#### **105ZB Variation and termination of section 104 agreements**

- (1) On the application of a party to a section 104 agreement to vary (or terminate) the agreement, the Authority may—
  - (a) if it appears to the Authority that it is necessary or expedient that the section 104 agreement should be varied (or terminated),
  - (b) if the Authority is satisfied, in the case of an application to vary the agreement involving such person as is mentioned in section 104(1) (a), that it is appropriate for work proposed to be done by a person other than the sewerage undertaker to be so done, and
  - (c) if the Authority is satisfied that variation (or termination) cannot be achieved by agreement within a reasonable time,
 by order vary (or terminate) the section 104 agreement.
- (2) If an order under subsection (1) is made in relation to a section 104 agreement, the agreement—
  - (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect, as the case may be.
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party.
- (4) Neither the CMA nor the Authority may exercise, in respect of an agreement to vary or terminate a section 104 agreement, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement to vary or terminate a section 104 agreement, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to



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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).

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

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

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- (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.

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

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

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- (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.

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

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

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

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

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

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

- (1) Before issuing rules under section 105ZF, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any sewerage undertakers or other persons likely to be affected by the rules;

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

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

- (1) This section applies if the Authority proposes to issue revised rules under section 105ZF and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 105ZG does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
  - (a) that period of 14 days expires, or
  - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised rules, and

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- (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.
- (9) In this section “the Minister” has the meaning given by section 105ZG.

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

- (1) The Minister may issue guidance as to the content of rules under section 105ZF.
- (2) Before issuing the guidance, the Minister must—
  - (a) prepare a draft of the proposed guidance;
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise the guidance and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (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.”
- (4) In section 107 (right of sewerage undertaker to undertake the making of communications with public sewers), after subsection (1) there is inserted—
  - “(1A) A sewerage undertaker may not give notice to a person under subsection (1) if—
    - (a) the undertaker and the person entered into an agreement under section 104, and

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- (b) the agreement provides for the communication to which the person's proposal relates to be made by the person.”
- (5) In section 108 (communication works by person entitled to communication), in subsection (1), after “section 106 above” there is inserted “ or may not make such an election because of section 107(1A) ”.

#### Commencement Information

- I17** S. 11(1) in force at 18.12.2015 for specified purposes by [S.I. 2015/1938, art. 2\(c\)\(i\)](#)
- I18** S. 11(3) in force at 18.12.2015 for specified purposes by [S.I. 2015/1938, art. 2\(c\)\(ii\)](#)

PROSPECTIVE

### *Arrangements for water undertakers to take water*

## **12 Arrangements for water undertakers to take water from other persons**

In Part 3 of the Water Industry Act 1991, after Chapter 2A there is inserted—

### **“CHAPTER 2B**

#### **ADDITIONAL SOURCES OF WATER**

### **66M Arrangements for water undertakers to take water from other persons**

- (1) The Minister may by regulations make provision about the supply of water to a water undertaker by a person other than a water undertaker.
- (2) Regulations under this section may, in particular—
  - (a) confer functions on the Authority, the Secretary of State and the Welsh Ministers;
  - (b) make provision preventing the CMA or the Authority from exercising powers under the Competition Act 1998 in respect of a water supply agreement;
  - (c) include provision described in sections 66N and 66O;
  - (d) make provision excepting water supply agreements of such description as the regulations may specify from the effect of—
    - (i) any provision of the regulations, or
    - (ii) any provision of the codes or rules made under the regulations.
- (3) In this Chapter—

“the Minister” means—

  - (a) the Secretary of State, in relation to the supply of water to a water undertaker whose area is wholly or mainly in England, and

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(b) the Welsh Ministers, in relation to the supply of water to a water undertaker whose area is wholly or mainly in Wales;  
 “relevant person” means a person other than a water undertaker;  
 “water supply agreement” means an agreement for the supply of water to a water undertaker by a relevant person.

(4) Nothing in provision made under this Chapter affects a water supply agreement made before any regulations under this section first come into force.

#### **66N Orders in respect of supplies by relevant persons**

(1) Regulations under section 66M may, in particular, make provision for the Authority by order—

- (a) to require a water undertaker to take a supply of water from a relevant person, and
- (b) to vary or terminate a water supply agreement.

(2) Provision made under subsection (1)(a) must provide that—

- (a) the Authority may make an order only on an application by the water undertaker or the relevant person, and
- (b) before making an order the Authority must be satisfied that the water undertaker and the relevant person cannot reach agreement.

(3) Provision made under subsection (1)(b) must provide that the Authority may make an order only on an application by a party to the agreement.

(4) The provision that may be made under subsection (1) includes—

- (a) provision about the circumstances in which the Authority may make an order;
- (b) provision requiring the Authority to consult the Environment Agency, the NRBW or both of them before making an order;
- (c) provision requiring the Authority to have regard to whether a person has complied with a code or rules described in section 66O;
- (d) provision enabling the Authority to specify the times at which, the period during which and the terms and conditions on which the supply of water must be taken;
- (e) provision for an order made by the Authority requiring a supply of water to be taken to have effect as an agreement between the water undertaker and the relevant person (or those persons and other persons);
- (f) provision requiring a party to a water supply agreement to pay compensation to another party on the variation or termination of the agreement.

#### **66O Codes and rules in respect of water supply agreements**

(1) Regulations under section 66M may, in particular, make provision for the Authority to issue one or more codes in respect of water supply agreements, including—



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- (a) provision for a code to include provision about procedures in connection with making, varying or terminating a water supply agreement;
  - (b) provision for a code to include provision about the terms and conditions of water supply agreements;
  - (c) provision for a code to include provision about procedures to be followed by the Authority in determining whether to make an order described in section 66N;
  - (d) provision for the Authority to direct water undertakers to comply with a code;
  - (e) provision for such directions to be enforceable by the Authority under section 18;
  - (f) provision for the Minister to require a code to be revised or to prevent a code being issued or revised (but see subsections (3) and (4)).
- (2) Regulations under section 66M may, in particular, make provision for the Authority to issue and enforce rules about charges that may be imposed under water supply agreements, including—
- (a) provision for the making of rules about the amount or maximum amount of a charge;
  - (b) provision for the Authority to direct water undertakers to comply with the rules;
  - (c) provision for such directions to be enforceable by the Authority under section 18;
  - (d) provision for the Minister to issue guidance as to the content of the rules (but see subsection (4));
  - (e) provision for the Minister to prevent rules being issued (but see subsection (4)).
- (3) Regulations conferring a power on the Minister as described in subsection (1) (f) must provide that—
- (a) if the power is exercised to impose a requirement in respect of agreements for such supplies of water as are referred to in paragraph (a) or (b) of the definition of “the Minister” in section 66M(3), it may not be exercised again in respect of such supplies of water as are referred to in that paragraph, and
  - (b) if the power to impose a requirement in respect of agreements for such supplies of water as are referred to in paragraph (a) or (b) of the definition of “the Minister” in section 66M(3) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such agreements as are referred to in that paragraph on a later occasion.
- (4) Functions conferred by provision described in subsection (1)(f) or (2)(d) or (e) must be conferred on the Secretary of State and the Welsh Ministers acting jointly so far as the code, guidance or rules relate to—
- (a) a supply of water to a water undertaker whose area is wholly or mainly in England by means of the supply system of a water undertaker whose area is wholly or mainly in Wales;

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- (b) a supply of water to a water undertaker whose area is wholly or mainly in Wales by means of the supply system of a water undertaker whose area is wholly or mainly in England.

- (5) References in this section to a water undertaker's supply system are to be construed in accordance with section 17B.

#### **66P Procedure etc**

- (1) A statutory instrument containing regulations under section 66M may not be made unless a draft of the instrument has been laid before and approved by a resolution of—
  - (a) each House of Parliament, in the case of regulations made by the Secretary of State, or
  - (b) the Assembly, in the case of regulations made by the Welsh Ministers.
- (2) Before laying a draft of an instrument in accordance with subsection (1), the Minister must consult—
  - (a) the Authority,
  - (b) water undertakers,
  - (c) water supply licensees,
  - (d) the Chief Inspector of Drinking Water,
  - (e) the Chief Inspector of Drinking Water for Wales if there is one,
  - (f) the Environment Agency,
  - (g) the NRBW,
  - (h) the Council, and
  - (i) such other persons as the Minister considers appropriate.
- (3) The supplemental and consequential provision that regulations under section 66M may include by virtue of section 213(2)(f) includes provision amending, repealing or revoking provision made by or under an enactment.
- (4) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 66M as it applies to regulations made by the Secretary of State.
- (5) If a draft of an instrument containing regulations under section 66M would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.
- (6) In this section “enactment” includes a Measure or Act of the Assembly.”

#### *Appointments and variations*

### **13 Procedure with respect to appointments and variations**

- (1) Section 8 of the Water Industry Act 1991 (procedure with respect to appointments and variations replacing relevant undertakers) is amended as follows.
- (2) In subsection (2)(a) (the Water Services Regulation Authority to serve notice of application), for “on the existing appointee the NRA and on every” there is substituted “on—

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- (i) the existing appointee,
  - (ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
  - (iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
  - (iv) the appropriate agency, and
  - (v) every”.
- (3) In subsection (4)(b) (the Secretary of State or the Water Services Regulation Authority to serve notice of proposed appointment or variation), for “on the existing appointee the NRA and on every” there is substituted “on—
  - (i) the existing appointee,
  - (ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
  - (iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
  - (iv) the appropriate agency, and
  - (v) every”.
- (4) In subsection (5)(b) (the Secretary of State or the Water Services Regulation Authority to serve notice of the making of an appointment or variation), for “on the NRA and on every” there is substituted “on—
  - (i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
  - (ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
  - (iii) the appropriate agency, and
  - (iv) every”.
- (5) After subsection (6) insert—
  - “(6A) In this section “the appropriate agency”, in relation to the replacement of a relevant undertaker, means—
    - (a) the Environment Agency, if the undertaker's area is wholly in England;
    - (b) the NRBW, if the undertaker's area is wholly in Wales;
    - (c) both the Environment Agency and the NRBW, if the undertaker's area is partly in England and partly in Wales.”

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### *Duty of CMA to refer mergers of relevant undertakers*

## **14 Exceptions to duty and undertakings in lieu of merger references**

- (1) In section 32 of the Water Industry Act 1991 (duty to refer merger of water or sewerage undertaking), for “Subject to section 33 below,” there is substituted “ Subject to sections 33 and 33A below, ”.
- (2) After section 33 (exclusion of small mergers) there is inserted—

### **“33A Exceptions to duty to make reference**

- (1) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(a) if it believes that—
  - (a) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a merger reference;
  - (b) the prospective merger is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
  - (c) the prospective merger is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (2) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(b) if it believes that—
  - (a) the merger has not prejudiced and is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
  - (b) the merger has prejudiced or is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (3) Before forming a view as to the matters in subsection (1)(b) or (c) or (2)(a) or (b), the CMA must—
  - (a) request the Authority to give an opinion under section 33B, and
  - (b) consider that opinion.
- (4) The CMA may not make a merger reference under section 32 if—
  - (a) it is considering whether to accept an undertaking under section 33D instead of making such a reference; or
  - (b) it is prevented by section 74 of the Enterprise Act 2002 (effect of accepting an undertaking in lieu), in a case where that section as applied by paragraph 1 of Schedule 4ZA may have effect to prevent such a merger reference.
- (5) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA.

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### **33B Opinion of the Authority**

- (1) Where the CMA makes a request under section 33A(3), the Authority must give its opinion on—
  - (a) whether and to what extent the actual or prospective merger has prejudiced or is likely to prejudice the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises, and
  - (b) where it forms the view that the actual or prospective merger has prejudiced or is likely to prejudice that ability, whether the prejudice in question is outweighed by any relevant customer benefits relating to the merger.
- (2) In forming an opinion on the matters in subsection (1), the Authority must apply the methods set out in the statement under section 33C that has effect when the request under section 33A(3) is made.
- (3) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of this section as references to what the Authority believes.

### **33C Statement of methods**

- (1) The Authority must prepare and keep under review a statement of the methods to be applied in forming an opinion on the matters in section 33B(1).
  - (2) The statement must in particular set out—
    - (a) the criteria to be used for assessing the effect of any particular water enterprise ceasing to be a distinct enterprise on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises;
    - (b) the relative weight to be given to the criteria.
  - (3) Before preparing or altering the statement, the Authority must consult—
    - (a) the Secretary of State,
    - (b) the Welsh Ministers,
    - (c) the CMA, and
    - (d) relevant undertakers.
  - (4) The Authority must from time to time publish the statement as it has effect for the time being.”
- (3) After section 33C (inserted by subsection (2)) there is inserted—

### **“33D Undertakings in lieu of a merger reference**

- (1) If the CMA considers that it is under a duty to make a merger reference under section 32, it may instead of making such a reference accept undertakings to take such action as it thinks appropriate from such of the parties concerned in the actual or prospective merger as it considers appropriate.

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- (2) The power under subsection (1) is to be exercised for the purpose of remedying, mitigating or preventing the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises that the actual or prospective merger has had, may have had or may be likely to have.
- (3) In forming a view for the purposes of subsection (1) as to whether it is under a duty to make a merger reference under section 32, the CMA—
  - (a) is to disregard the effect of section 33A(4)(a), but
  - (b) is to take into account the powers under section 33A(1) and (2) to decide not to make a merger reference.
- (4) In proceeding under subsection (1), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises.
- (5) In proceeding under subsection (1), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the actual or prospective merger.
- (6) Before deciding whether or not to accept an undertaking under this section, the CMA must—
  - (a) request the Authority to give its opinion on the effect of the undertakings offered, and
  - (b) consider the Authority's opinion.
- (7) Where the CMA makes a request under subsection (6), the Authority must give its opinion on the effect of the undertakings offered.
- (8) An undertaking under this section—
  - (a) comes into force when accepted;
  - (b) may be varied or superseded by another undertaking under this section;
  - (c) may be released by the CMA.
- (9) An undertaking under this section ceases to be in force if an order under section 75 or 76 of the Enterprise Act 2002 (powers to make an order where an undertaking is not fulfilled) is made, in a case where that provision of the Enterprise Act 2002 as applied by paragraph 1 of Schedule 4ZA may have effect in relation to such an undertaking.
- (10) The CMA must consider any representations received by it in relation to varying or releasing an undertaking under this section as soon as reasonably practicable.
- (11) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of subsection (7) as references to what the Authority believes.”

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#### Commencement Information

- I19** S. 14(1)(3) in force at 18.12.2015 by S.I. 2015/1938, art. 2(d)  
**I20** S. 14(2) in force at 6.4.2015 for specified purposes by S.I. 2015/773, art. 2(2)(a)  
**I21** S. 14(2) in force at 18.12.2015 in so far as not already in force by S.I. 2015/1938, art. 2(d)

### 15 Exclusion of small mergers: advice of CMA on threshold

In section 33 of the Water Industry Act 1991 (exclusion of small mergers from the duty to make a merger reference under section 32), after subsection (6) there is inserted—

“(6A) The CMA must—

- (a) keep under review the conditions set out in subsection (1)(a) and (b), and
- (b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.”

#### *Relevant undertakers' charges*

### 16 Charges schemes

- (1) In section 143 of the Water Industry Act 1991 (charges schemes), for subsections (6) to (9) (charges scheme not to take effect until approved by the Water Services Regulation Authority, etc), there is substituted—

“(6) If the Authority considers that a relevant undertaker's charges scheme does not comply with—

- (a) subsection (2), (3) or (5),
- (b) regulations under section 143A,
- (c) rules under section 143B, or
- (d) section 144A(9), (10) or (11)(a),

the Authority may give the undertaker a direction to do, or not to do, a thing specified in the direction.

(6A) The Authority must issue rules (and, if it revises rules it has issued, must issue revised rules) about consulting the Council about proposed charges schemes.

(6B) The rules must require a relevant undertaker that proposes to make a charges scheme to consult the Council about its proposed scheme.

(6C) If the Authority considers that a relevant undertaker has not complied with those rules, it may give the undertaker a direction to do, or not to do, a thing specified in the direction.

(6D) It is the duty of a relevant undertaker to comply with a direction under subsection (6) or (6C), and this duty is enforceable by the Authority under section 18.”

- (2) After section 143A there is inserted—

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### **“143B Rules about charges schemes**

- (1) The Authority may issue rules about charges schemes under section 143.
- (2) Rules under this section may in particular—
  - (a) make provision about the types of charges that may be imposed;
  - (b) make provision about the amount or maximum amount, or the methods for determining the amount or maximum amount, of any type of charge;
  - (c) make provision about the principles for determining what types of charges may or may not be imposed;
  - (d) make provision about principles for determining the amount of any charge that may be imposed;
  - (e) require particular schemes of charges to be available in specified cases;
  - (f) make provision about the timing of payment of charges;
  - (g) require charges schemes to be published;
  - (h) make provision about how charges schemes are to be published.
- (3) The rules may provide for the reduction of charges under a charges scheme where conditions specified by the rules are satisfied.
- (4) Rules made by virtue of subsection (3) may in particular specify conditions about—
  - (a) taking steps for the purpose of reducing or managing water consumption;
  - (b) taking steps for the purpose of reducing or managing the discharge of matter from premises;
  - (c) taking steps for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.
- (5) The provisions of charges schemes must comply with rules issued under this section.
- (6) The rules may make different provision for different cases, including different provision in relation to different, or different descriptions of, persons, circumstances or localities.
- (7) The power to make rules under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes.
- (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (9) The Authority must issue revised rules if—
  - (a) guidance is issued under section 143E, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.



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- (10) Revised rules may include provision for applying any of their revisions to charges schemes under section 143 made before the revised rules come into effect.

#### **143C Rules under section 143B: procedure**

- (1) The Authority must have regard to guidance issued under section 143E in making rules under section 143B (as well as to any guidance issued under section 43 or 44 of the Flood and Water Management Act 2010).
- (2) Before issuing rules under section 143B, the Authority must—
- (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
- (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any relevant undertakers likely to be affected by the rules;
  - (e) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed rules.
- (5) Before rules under section 143B 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 in question affect relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the rules in question affect relevant 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 prepared by the Authority may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 143D.

#### **143D Rules under section 143B: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 143B 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 143C 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.

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- (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 143C.

#### **143E Rules under section 143B: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 143B.
- (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, in relation to relevant undertakers whose areas are wholly or mainly in England;

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- (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.”

#### Commencement Information

- I22** S. 16(1) in force at 1.11.2015 by S.I. 2015/1469, art. 4(a) (with s. 5(4)(5))  
**I23** S. 16(2) in force at 15.7.2015 for specified purposes by S.I. 2015/1469, art. 2(a) (with art. 5(4)(5))  
**I24** S. 16(2) in force at 1.11.2015 in so far as not already in force by S.I. 2015/1469, art. 4(a) (with s. 5(4)(5))

## 17 Rules about charges for connections etc

After section 144 of the Water Industry Act 1991 there is inserted—

### *“Rules about undertakers' charges*

#### **144ZA Rules about charges for connections etc**

- (1) The Authority may issue rules about charges that may be imposed by a relevant undertaker under—
- (a) section 42(2)(a) (provision of new water main);
  - (b) section 45(6) (connections with water main);
  - (c) section 46(7)(b) (ancillary works for domestic connection);
  - (d) section 99(2)(a) or (2A)(a) (provision of public sewer or lateral drain);
  - (e) section 101B(3) (lateral drains);
  - (f) section 107(3)(b)(i) (communications with public sewers);
  - (g) section 185(5) (moving of pipes etc).
- (2) Rules under this section may in particular—
- (a) make provision about the types of charges that may be imposed;
  - (b) make provision about the amount or maximum amount, or the methods for determining the amount or maximum amount, of any type of charge;
  - (c) make provision about the principles for determining what types of charges may or may not be imposed;
  - (d) make provision about the principles for determining the amount of any charge that may be imposed;
  - (e) provide for charges to be payable over a period;
  - (f) make provision about publication of the charges that may be imposed.
- (3) The charges that may be imposed by a water undertaker under section 42(2)(a) for the provision of a new water main may include charges for—
- (a) providing such other infrastructure, including other water mains, as it is necessary to provide in consequence of the provision of the new water main;
  - (b) doing works to increase the capacity of an existing water main, or procuring the doing of such works, where the use of that increased capacity is a consequence of the provision of the new water main.

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*Status: Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Water Act 2014, Part 1 is up to date with all changes known to be in force on or before 07 August 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)*

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- (4) The charges that may be imposed by a sewerage undertaker under section 99(2)
  - (a) for the provision of a new public sewer may include charges for—
    - (a) providing such other infrastructure, including other public sewers, as it is necessary to provide in consequence of the provision of the new public sewer;
    - (b) doing works to increase the capacity of an existing public sewer, where the use of that increased capacity is a consequence of the provision of the new public sewer.
- (5) The rules may make provision as to—
  - (a) the amount of security that may be required by a relevant undertaker under section 42(1)(b), 47(2)(a), 99(1)(b), 101B(3A), 107(3)(b)(ii) or 185(4);
  - (b) the type of security that may be required;
  - (c) the payment of interest on a sum deposited with a relevant undertaker by way of security.
- (6) If the Authority considers that a relevant 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 thing specified in the direction.
- (7) It is the duty of a relevant undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The rules may make—
  - (a) different provision for different persons or different descriptions of person;
  - (b) different provision for different powers to impose charges or different descriptions of such powers.
- (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 144ZD, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.

#### **144ZB Rules under section 144ZA: procedure**

- (1) The Authority must have regard to guidance issued under section 144ZD in making rules under section 144ZA.
- (2) Before issuing rules under section 144ZA, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any relevant undertakers likely to be affected by the rules;

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- (e) any water supply or sewerage licensees likely to be affected by the rules;
  - (f) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed rules.
- (5) Before rules under section 144ZA 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 in question affect relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as the rules in question affect relevant 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 prepared by the Authority may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 144ZC.

#### **144ZC Rules under section 144ZA: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 144ZA 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 144ZB 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).

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- (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 144ZB.

#### **144ZD Rules under section 144ZA: guidance**

- (1) The Minister must issue guidance as to the content of rules under section 144ZA.
- (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, in relation to relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.”

#### **Commencement Information**

**I25** S. 17 in force at 6.4.2015 for specified purposes by S.I. 2015/773, art. 2(1)(b)

**I26** S. 17 in force at 15.7.2015 for specified purposes by S.I. 2015/1469, art. 2(b) (with art. 5(1)(5))

VALID FROM 01/04/2018

#### **18 Charges for providing a water main etc**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 42 (financial conditions for compliance with the duty in section 41 to provide a water main)—

**Status:** Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.

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- (a) in subsection (1)(b) (condition as to providing security), for the words from “such security” to “reasonably required” there is substituted “such security as charging rules allow and the undertaker may have required”;
  - (b) in subsection (2) (undertaking to pay), for paragraph (a) there is substituted—
    - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
  - (c) subsections (4) and (5) (interest on sums deposited by way of security) are repealed;
  - (d) in subsection (6) (reference of disputes to Water Services Regulation Authority), in paragraph (b), after “the amount” there is inserted “or amounts by way of charges”.
- (3) In section 45 (duty to make domestic connections to a water main)—
- (a) in subsection (2) (the nature of the duty), the words “, at the expense of the person serving the notice,” are repealed;
  - (b) for subsection (6) there is substituted—
    - “(6) Where a water undertaker carries out any works which it is its duty under this section to carry out, the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules.”;
  - (c) in subsection (6A) (reference of disputes to Authority), for “as to whether the expenses were incurred reasonably” there is substituted “as to the payments required to be made”.
- (4) In section 46 (duty to carry out ancillary works for the purpose of making a domestic connection under section 45)—
- (a) in subsection (1) (the nature of the duty), the words “, at the expense of the person serving the notice,” are repealed;
  - (b) in subsection (7), in paragraph (b), for “under this section at another person's expense” there is substituted “as its duty under this section”;
  - (c) in subsection (7), in the words after paragraph (b), for “under that section at another person's expense” there is substituted “as its duty under that section”;
  - (d) in subsection (9) (consequences of exercising power under section 46(8) to lay a water main rather than a service pipe), paragraph (b) (maximum expenses recoverable) and the “but” preceding it are repealed.
- (5) In section 47 (conditions of connection with water main)—
- (a) in subsection (2)(a) (requirement to give security for amounts to be paid), for the words from “such security” to “reasonably require” there is substituted “such security as charging rules allow and the undertaker requires”;
  - (b) in subsection (3B) (reference of disputes to Authority), in the opening words, “whether” is repealed;
  - (c) in subsection (3B), for paragraph (a) there is substituted—
    - “(a) the security required to be provided by a condition imposed under subsection (2)(a),”;
  - (d) in subsection (3B)(b), at the beginning there is inserted “whether”;
  - (e) in subsection (3B)(c), after “particular case,” there is inserted “whether”.

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### Commencement Information

**I27** S. 18 in force at 1.4.2018 by S.I. 2017/462, **art. 5(a)** (with **art. 14**)

VALID FROM 01/04/2018

## 19 Charges for providing a public sewer etc

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 99 (financial conditions for compliance with the duty in section 98 to provide a public sewer or lateral drain)—
  - (a) in subsection (1)(b) (condition as to providing security), for the words from “such security” to “reasonably required” there is substituted “such security as charging rules allow and the undertaker may have required”;
  - (b) in subsection (2) (undertaking to pay in respect of public sewer), for paragraph (a) there is substituted—
    - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
  - (c) in subsection (2A) (undertaking to pay in respect of lateral drain), for paragraph (a) there is substituted—
    - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
  - (d) subsections (4) and (5) (interest on sums deposited by way of security) are repealed;
  - (e) in subsection (6) (reference of disputes to the Water Services Regulation Authority), in paragraph (b), after “the amount” there is inserted “or amounts by way of charges”.
- (3) In section 101B (power to provide lateral drain following provision of public sewer)—
  - (a) in subsection (3) (obligation to pay for drain requested), for “the costs reasonably incurred in or in connection with providing that drain” there is substituted “such charges as the undertaker may impose in accordance with charging rules”;
  - (b) after subsection (3) there is inserted—
    - “(3A) The sewerage undertaker may require the person making a request under this section to provide such security for the payment of the charges as charging rules allow.”;
  - (c) in subsection (4) (reference of disputes to Authority), for paragraph (b) there is substituted—
    - “(b) the amount of any charge imposed.”;
  - (d) in subsection (4), after paragraph (b) there is inserted “or
    - (c) the security required to be provided.”.
- (4) In section 107 (right of a sewerage undertaker to undertake the making of a communication with a public sewer)—



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- (a) in subsection (3)(b)(i) (no obligation for undertaker to act until paid an estimated cost of the work in advance), for “the cost of the work” there is substituted “ the amount by way of charges that the undertaker may impose in accordance with charging rules for making the connection ”;
  - (b) in subsection (3)(b)(ii) (no obligation for undertaker to act until given security for payment), for “such security” to the end there is substituted “ such security for the payment of that amount as charging rules allow and it may have required. ”;
  - (c) for subsection (4), there is substituted—
    - “(4) If a payment to a sewerage undertaker under subsection (3) exceeds the charges that may, in the event, be imposed in accordance with charging rules for making the connection in question, the excess is to be repaid by the undertaker; and, if and so far as those charges are not covered by a payment under subsection (3), those charges are to be paid by the person for whom the work was undertaken.”;
  - (d) in subsection (4A) (reference to disputes to Authority), in paragraph (a), for “of the cost of works” there is substituted “ of the amount of charges ”;
  - (e) in subsection (4A), for paragraph (b) (and the “or” following it) there is substituted—
    - “(b) the security required by the undertaker, or”;
  - (f) in subsection (4A), for paragraph (c) there is substituted—
    - “(c) whether any excess is repayable, or any charges are payable, under subsection (4), or the amount of any such excess or charges,”.
- (5) In section 146 (connection charges etc, and charges for highway drainage), in subsection (5)(a), after “expenses incurred by it in” there is inserted “ , or charges imposed by it for, ”.

#### Commencement Information

**I28** S. 19 in force at 1.4.2018 by [S.I. 2017/462](#), [art. 5\(b\)](#) (with [art. 14](#))

VALID FROM 01/04/2018

#### 20 Charges for moving pipes

In section 185 of the Water Industry Act 1991 (duty to move pipes etc in certain cases), in subsection (5) (recovery of undertaker's expenses), for the words from “the undertaker” to the end there is substituted “ the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules ”.

#### Commencement Information

**I29** S. 20 in force at 1.4.2018 by [S.I. 2017/462](#), [art. 5\(c\)](#) (with [art. 14](#))

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*Status: Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.*

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### *Sustainable drainage*

## 21 Drainage systems relieving public sewers

(1) After section 114 of the Water Industry Act 1991 there is inserted—

### *“Sustainable drainage*

#### **114A Drainage systems relieving public sewers**

- (1) Sewerage undertakers may construct, on their own or on another's land, drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does so.
- (2) A sewerage undertaker may maintain and operate a drainage system constructed by it under subsection (1).
- (3) In this section—
  - “drainage system” means a structure designed to receive rainwater and other surface water, other than a natural watercourse;
  - “natural watercourse” means a river or stream;
  - “rainwater” includes snow and other precipitation;
  - “structure” includes—
    - (a) any part of an existing or proposed structure, and
    - (b) any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or other surface water.
- (4) The powers conferred by subsections (1) and (2) are not to be regarded as functions of a sewerage undertaker for the purposes of section 155 (compulsory purchase of land required for the purposes of carrying out functions of relevant undertakers).”
- (2) In section 158 of that Act (powers to lay pipes in streets), in subsection (7) (meaning of reference to a relevant pipe), in paragraph (b)—
  - (a) omit the “or” at the end of both sub-paragraphs (i) and (ii);
  - (b) after sub-paragraph (iii) there is inserted “or
    - (iv) any pipe forming part of, or required in connection with, a drainage system constructed under section 114A.”
- (3) In Schedule 3 to the Flood and Water Management Act 2010 (sustainable drainage), after paragraph 19 there is inserted—

#### **“Exception 3: systems under section 114A Water Industry Act 1991**

- 19A The adoption duty does not apply to a drainage system constructed under section 114A of the Water Industry Act 1991 (drainage systems relieving public sewers).”

*Status: Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.*

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## CHAPTER 3

### REGULATION OF THE WATER INDUSTRY

#### *General duties of the Water Services Regulation Authority*

#### **22 Primary duty to secure resilience**

(1) Section 2 of the Water Industry Act 1991 (general duties with respect to water industry) is amended as follows.

(2) In subsection (2A)—

- (a) omit the “and” at the end of paragraph (c);
- (b) after paragraph (d) insert “; and
- (e) to further the resilience objective.”

(3) After subsection (2D) insert—

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

- (a) to secure the long-term resilience of water undertakers' supply systems and sewerage undertakers' sewerage systems as regards environmental pressures, population growth and changes in consumer behaviour, and
- (b) to secure that undertakers take steps for the purpose of enabling them to meet, in the long term, the need for the supply of water and the provision of sewerage services to consumers,

including by promoting—

- (i) appropriate long-term planning and investment by relevant undertakers, and
- (ii) the taking by them of a range of measures to manage water resources in sustainable ways, and to increase efficiency in the use of water and reduce demand for water so as to reduce pressure on water resources.

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

- (a) the reference to water undertakers' supply systems is to be construed in accordance with section 17B;
- (b) the reference to sewerage undertakers' sewerage systems is a reference to the systems comprising—
  - (i) the systems of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that undertakers are required to provide by section 94, and
  - (ii) the lateral drains that undertakers are required to maintain by section 94.”

#### **Commencement Information**

**I30** S. 22 not in force at Royal Assent; s. 22 in force for specified purposes at 14.7.2014, see s. 94(2)(e)

**I31** S. 22 in force at 18.12.2015 in so far as not already in force by S.I. 2015/1938, art. 2(e)

*Status: Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.*

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## 23 General duty as regards undue preference in the provision of services

In section 2 of the Water Industry Act 1991 (general duties of the Secretary of State and the Water Services Regulation Authority with respect to the water industry), in subsection (3) (general considerations in exercising powers and duties), after paragraph (b) there is inserted—

- “(ba) to secure that no undue preference (including for itself) is shown, and that there is no undue discrimination, in the doing by such a company of—
- (i) such things as relate to the provision of services by itself or another such company, or
  - (ii) such things as relate to the provision of services by a water supply licensee or a sewerage licensee;”.

### Commencement Information

**I32** S. 23 in force at 1.1.2015 for specified purposes by [S.I. 2014/3320](#), [art. 2\(1\)\(a\)](#) (with [art. 3](#))

**I33** S. 23 in force at 6.4.2015 for W. for specified purposes by [S.I. 2015/773](#), [art. 2\(3\)\(a\)](#) (with [art. 6](#))

## 24 Strategic priorities and objectives

(1) For section 2A of the Water Industry Act 1991 there is substituted—

### “2A Strategic priorities and objectives: England

- (1) The Secretary of State may from time to time publish a statement setting out strategic priorities and objectives for the Authority in carrying out relevant functions relating wholly or mainly to England.
- (2) The Authority must carry out those functions in accordance with any statement published under this section.
- (3) In formulating a statement under this section, the Secretary of State—
  - (a) must have regard to the duties imposed on the Authority under section 2,
  - (b) must have regard to social and environmental matters, and
  - (c) may have regard to such other matters as the Secretary of State thinks fit.
- (4) Before publishing a statement under this section, the Secretary of State must consult—
  - (a) the Authority,
  - (b) the Council,
  - (c) relevant undertakers,
  - (d) licensed water suppliers,
  - (e) the Environment Agency,
  - (f) the Welsh Ministers,
  - (g) the NRBW, and
  - (h) anyone else the Secretary of State thinks appropriate.
- (5) Before publishing a statement under this section the Secretary of State must—

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- (a) lay a draft of the statement before Parliament, and
  - (b) then wait until the end of the 40-day period.
- (6) The Secretary of State may not publish the statement under this section if, within the 40-day period, either House of Parliament resolves not to approve it.
- (7) “The 40-day period” means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).
- (8) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (9) In this section “relevant functions relating wholly or mainly to England” means the functions mentioned in section 2(1)(b) so far as they relate to appointment areas wholly or mainly in England.
- (10) In subsection (9) “appointment area” means an area for which an appointment is held under Chapter 1 of Part 2.

## **2B Strategic priorities and objectives: Wales**

- (1) The Welsh Ministers may from time to time publish a statement setting out strategic priorities and objectives for the Authority in carrying out relevant functions relating wholly or mainly to Wales.
- (2) The Authority must carry out those functions in accordance with any statement published under this section.
- (3) In formulating a statement under this section the Welsh Ministers—
- (a) must have regard to the duties imposed on the Authority under section 2,
  - (b) must have regard to social and environmental matters, and
  - (c) may have regard to such other matters as the Welsh Ministers think fit.
- (4) Before publishing a statement under this section, the Welsh Ministers must consult—
- (a) the Authority,
  - (b) the Council,
  - (c) relevant undertakers,
  - (d) licensed water suppliers,
  - (e) the NRBW,
  - (f) the Secretary of State,
  - (g) the Environment Agency, and
  - (h) anyone else the Welsh Ministers think appropriate.
- (5) Before publishing a statement under this section the Welsh Ministers must—
- (a) lay a draft of the statement before the Assembly, and
  - (b) then wait until the end of the 40-day period.

**Status:** Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.

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- (6) The Welsh Ministers may not publish the statement under this section if, within the 40-day period, the Assembly resolves not to approve it.
  - (7) “The 40-day period” means the period of 40 days beginning with the day on which the draft is laid before the Assembly.
  - (8) When calculating the 40-day period, ignore any period during which the Assembly is dissolved or is in recess for more than 4 days.
  - (9) In this section “relevant functions relating wholly or mainly to Wales” means the functions mentioned in section 2(1)(b) so far as they relate to appointment areas wholly or mainly in Wales.
  - (10) In subsection (9) “appointment area” means an area for which an appointment is held under Chapter 1 of Part 2.”
- (2) In section 2(6A), (6B) and (7) of that Act (general duties with respect to water industry), for “section 2A” there is substituted “ sections 2A and 2B ”.
  - (3) In section 192A of that Act (forward work programme), after subsection (3) there is inserted—
    - “(3A) The forward work programme for any year must also include an explanation of how the projects described in it reflect any strategic priorities or objectives published under section 2A or 2B.”

#### Commencement Information

**I34** S. 24 in force at 6.4.2015 by S.I. 2015/773, art. 2(1)(c) (with art. 4)

*Regulation of relevant undertakers, water supply licensees and sewerage licensees*

## 25 Procedure for granting water supply and sewerage licences

- (1) Section 17F of the Water Industry Act 1991 (procedure for granting water supply licences) is amended as follows.
- (2) For subsection (1) (application to be made as set out in regulations) there is substituted—
  - “(1) The Authority must determine for each type of relevant application that may be made—
    - (a) the form and manner in which an application is to be made;
    - (b) the information it is to contain;
    - (c) the documents that are to accompany it;
    - (d) the fee that is to accompany it.
  - (1A) The fees may be different in different circumstances.
  - (1B) The Authority may make a new determination as to a matter referred to in subsection (1).

*Status: Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.*

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- (1C) The Authority must publish a notice of what it has determined under subsection (1) or (1B) in such manner as it thinks appropriate for bringing the determination to the attention of those affected by the determination.
- (1D) For the purposes of subsection (1) a relevant application is an application for—
- (a) the grant of a water supply or sewerage licence giving a particular authorisation or combination of authorisations;
  - (b) the variation of a water supply or sewerage licence so that it gives—
    - (i) a particular authorisation only, or
    - (ii) a particular combination of authorisations.
- (1E) A person making a relevant application must comply with such provisions of a notice published under subsection (1C) as relate to the application.”
- (3) Subsections (2), (3) and (5) (requirement for applicant to publish notice of an application made) are repealed.
- (4) In subsection (4) (procedure where the Secretary of State or the Authority proposes to refuse an application), for “the application”, in the first place it occurs, there is substituted “ a relevant application ”.

#### **Commencement Information**

**I35** S. 25 not in force at Royal Assent; s. 25(3) in force at 14.7.2014, see s. 94(2)(f)

## **26 Extension of time limit for imposing financial penalties**

- (1) In section 22C of the Water Industry Act 1991 (time limits on the imposition of financial penalties), in subsection (1), for “twelve months” there is substituted “ five years ”.
- (2) But subsection (1) does not apply in relation to a contravention or failure which—
- (a) occurred before the date on which this section comes into force, and
  - (b) is not continuing on that date.

## **27 Water resources management plans for England: resilience**

- (1) Chapter 1 of Part 3 of the Water Industry Act 1991 (water supply) is amended as follows.
- (2) In section 37A(3) (water resources management plans: preparation and review), at the end insert—
- “(and see also section 37AA).”
- (3) After that section insert—

### **“37AA Water resources management plans for England: resilience**

- (1) The Secretary of State may give a direction about the basis on which a water resources management plan for England is to be prepared.

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**Status:** *Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.*

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- (2) A direction under this section may be given only where the Secretary of State considers it appropriate to do so with a view to securing that a water undertaker is able to meet the need for the supply of water to consumers in particular circumstances.
- (3) A direction under this section may, in particular, require a plan to be prepared on the basis of a specified assumption, including—
  - (a) an assumption as to whether, and how often, specified circumstances are likely to arise;
  - (b) an assumption that a specified power would or would not be exercised by the water undertaker or another person in specified circumstances.
- (4) Before giving a direction under this section, the Secretary of State must consult—
  - (a) the Authority,
  - (b) the Welsh Ministers,
  - (c) each water undertaker to which the direction would apply,
  - (d) the Environment Agency,
  - (e) the NRBW, and
  - (f) such other persons as the Secretary of State considers appropriate.
- (5) In this section—
  - “specified” means specified in a direction under this section;
  - “water resources management plan for England” means a water resources management plan prepared by a water undertaker whose area is wholly or mainly in England.”

- (4) In section 37D(1) (water resources management plans: directions), after “37A” insert “, 37AA”.

## **28 Frequency of water resources management and drought plans**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 37A (water resources management plans: preparation and review)—
  - (a) in subsection (1), after “prepare” there is inserted “, publish”;
  - (b) in subsection (4), after “preparing” there is inserted “ and publishing”;
  - (c) in subsection (6), in the opening words, after “prepare” there is inserted “ and publish”.
- (3) In section 37D (water resources management plans: supplementary), after subsection (3) there is inserted—
  - “(4) The Minister may by order made by statutory instrument amend the period for the time being specified in section 37A(6)(c).
- (5) In subsection (4), “the Minister” means—
  - (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.



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- (6) A statutory instrument containing an order made by the Secretary of State under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A statutory instrument containing an order made by the Welsh Ministers under subsection (4) is subject to annulment in pursuance of a resolution of the Assembly.
- (8) Subsection (9) applies in relation to a statutory instrument containing both—
  - (a) an order made by the Secretary of State under subsection (4), and
  - (b) an order made by the Welsh Ministers under subsection (4).
- (9) If in accordance with subsection (6) or (7) (negative resolution procedure)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
  - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.”
- (4) In section 39B (drought plans: preparation and review)—
  - (a) in subsection (1), after “prepare” there is inserted “, publish ”;
  - (b) in subsection (6)—
    - (i) in the opening words, after “prepare” there is inserted “ and publish ”;
    - (ii) in paragraph (c) (long-stop date) for “three years” there is substituted “ five years ”.
- (5) After section 39C (drought plans: provision of information) there is inserted—

**“39D Drought plans: supplementary**

- (1) The Minister may by order made by statutory instrument amend the period for the time being specified in section 39B(6)(c).
- (2) In subsection (1), “the Minister” means—
  - (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.
- (3) A statutory instrument containing an order made by the Secretary of State under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing an order made by the Welsh Ministers under subsection (1) is subject to annulment in pursuance of a resolution of the Assembly.
- (5) Subsection (6) applies in relation to a statutory instrument containing both—
  - (a) an order made by the Secretary of State under subsection (1), and
  - (b) an order made by the Welsh Ministers under subsection (1).

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- (6) If in accordance with subsection (3) or (4) (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
  - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
- the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.”

## 29 Standards of performance: water supply

- (1) After section 38 of the Water Industry Act 1991 there is inserted—

**“38ZA Standards of performance in connection with the supply of water:  
water supply licensees**

- (1) For the purpose of establishing overall standards of performance in connection with the supply of water by water supply licensees in accordance with their retail authorisations or restricted retail authorisations, the Minister may, in accordance with section 39ZA, by regulations—
  - (a) impose requirements in connection with such supplies of water;
  - (b) provide for a requirement so imposed to be enforceable under section 18 by—
    - (i) the Minister, or
    - (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (2) The Minister may, in accordance with section 39ZA, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in the Minister's opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) may provide that if a water supply licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who—
  - (a) is affected by the failure, and
  - (b) is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may—
  - (a) include in a standard of performance a requirement for a water supply licensee, in prescribed circumstances, to inform a person of that person's rights by virtue of any such regulations;
  - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
  - (d) prescribe circumstances in which a water supply licensee is to be exempted from requirements of the regulations.

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- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.
- (6) In this section—
- “the Minister” means—
- (a) the Secretary of State, in relation to supplies of water made in accordance with a retail authorisation;
- (b) the Welsh Ministers, in relation to supplies of water made in accordance with a restricted retail authorisation;
- “prescribed” means prescribed by regulations made by the Minister.”
- (2) Section 38A of that Act (information as to levels of performance of water undertakers) is amended in accordance with subsections (3) to (6).
- (3) In subsection (1) (duty of Water Services Regulation Authority to collect information) —
- (a) the “and” following paragraph (a) is repealed;
- (b) after paragraph (a) there is inserted—
- “(aa) the compensation paid by water supply licensees under regulations under section 38ZA(2); and”;
- (c) in paragraph (b), after “water undertakers” there is inserted “ or water supply licensees ”.
- (4) After subsection (2) there is inserted—
- “(2A) At such times as the Authority may direct, each water supply licensee is to give the following information to the Authority—
- (a) as respects each standard established by regulations under section 38ZA(1), such information with respect to the level of performance achieved by the licensee as may be specified in the direction;
- (b) as respects each standard prescribed by regulations under section 38ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.”
- (5) For subsection (3) (offence of failing to comply with subsection (2)) there is substituted—
- “(3) The requirements in subsections (2) and (2A) are enforceable by the Authority under section 18.”
- (6) In subsection (4) (publication of information collected), after “water undertakers” there is inserted “ or water supply licensees ”.
- (7) After section 39 there is inserted—

**“39ZA Procedure for regulations under section 38ZA**

- (1) Section 39 applies for the purposes of making regulations under section 38ZA as it applies for the purposes of making regulations under section 38.

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- (2) In the application of section 39 by virtue of subsection (1)—
  - (a) a reference to a water undertaker is to be treated as a reference to a water supply licensee, and
  - (b) a reference to the Secretary of State is to be treated as a reference to the Minister (as defined in section 38ZA(6)).
- (3) Regulations under section 38ZA are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under section 38ZA is subject to annulment in pursuance of a resolution of—
  - (a) either House of Parliament, in the case of regulations made by the Secretary of State;
  - (b) the Assembly, in the case of regulations made by the Welsh Ministers.
- (5) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 38ZA as it applies to regulations made by the Secretary of State.”

#### Commencement Information

**I36** S. 29(2)(5) in force at 1.1.2015 for specified purposes by S.I. 2014/3320, art. 2(2)(a)

**I37** S. 29(7) in force at 15.7.2015 by S.I. 2015/1469, art. 2(c)

### 30 Standards of performance: sewerage

- (1) After section 95 of the Water Industry Act 1991 there is inserted—

**“95ZA Standards of performance in connection with provision of sewerage services: sewerage licensees**

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

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- (b) is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may—
  - (a) include in a standard of performance a requirement for a sewerage licensee, in prescribed circumstances, to inform a person of that person's rights by virtue of any such regulations;
  - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
  - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority's determination on such a reference to be enforceable in such manner as may be prescribed;
  - (d) prescribe circumstances in which a sewerage licensee is to be exempted from requirements of the regulations.
- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.”
- (2) Section 95A of that Act (information as to levels of performance of sewerage undertakers) is amended in accordance with subsections (3) to (6).
- (3) In subsection (1) (duty of Water Services Regulation Authority to collect information)
  - (a) the “and” following paragraph (a) is repealed;
  - (b) after paragraph (a) there is inserted—
    - “(aa) the compensation paid by sewerage licensees under regulations under section 95ZA(2); and”;
  - (c) in paragraph (b), after “sewerage undertakers” there is inserted “ or sewerage licensees ”.
- (4) After subsection (2) there is inserted—
  - “(2A) At such times as the Authority may direct, each sewerage licensee is to give the following information to the Authority—
    - (a) as respects each standard established by regulations under section 95ZA(1), such information with respect to the level of performance achieved by the licensee as may be specified in the direction;
    - (b) as respects each standard prescribed by regulations under section 95ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.”
- (5) For subsection (3) (offence of failing to comply with subsection (2)) there is substituted—
  - “(3) The requirements in subsections (2) and (2A) are enforceable by the Authority under section 18.”
- (6) In subsection (4) (publication of information collected), after “sewerage undertakers” there is inserted “ or sewerage licensees ”.
- (7) After section 96 there is inserted—

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### **“96ZA Procedure for regulations under section 95ZA**

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

#### **Commencement Information**

**I38** S. 30(2)(5) in force at 1.1.2015 for specified purposes by S.I. 2014/3320, **art. 2(2)(b)**

**I39** S. 30(7) in force at 15.7.2015 by S.I. 2015/1469, **art. 2(d)**

VALID FROM 01/04/2017

### **31 Interim duty: water supply**

For section 63AC of the Water Industry Act 1991 (interim duty of water undertaker: domestic and non-domestic supply) there is substituted—

#### **“63AC Interim duty: domestic and non-domestic supply**

- (1) This section applies where—
  - (a) a water supply licensee (“the previous licensee”) ceases to supply any premises with water, and
  - (b) the owner or occupier of the premises has not notified the water undertaker in whose area the premises are that—
    - (i) he has made arrangements for the continuation of the supply of water to the premises, or
    - (ii) he intends any supply of water to the premises to cease.
- (2) It is to be the duty of the water undertaker to continue the supply of water to the premises which was made by the previous licensee.
- (3) But the Authority may give a direction to an eligible water supply licensee (an “interim licensee”) providing that it is to be the duty of that licensee to continue the supply instead.
- (4) An “eligible water supply licensee” is a water supply licensee with a retail authorisation or a restricted retail authorisation who has elected to be an eligible water supply licensee for the purposes of this section in accordance with the code issued under section 63AF.
- (5) If the Authority proposes to give a direction under subsection (3) to an eligible water supply licensee—
  - (a) the Authority must give notice of the proposed direction to the licensee, and
  - (b) the licensee may, in accordance with the code issued under section 63AF, temporarily suspend the election made by the licensee

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as mentioned in subsection (4), so that the proposed direction cannot be given to the licensee.

- (6) Where a supply is made by an undertaker under subsection (2)—
- (a) the charges payable in respect of the supply are to be fixed from time to time by a charges scheme under section 143, and
  - (b) subject to subsection (12), the supply is to be made until—
    - (i) a supply is made by an interim licensee by virtue of a direction under subsection (3),
    - (ii) a supply is made by a water supply licensee following the service of a notice under section 63AA or 63AB;
    - (iii) a supply is made under section 52 or 55, or
    - (iv) a notice is served by the undertaker on the owner or occupier of the premises stating that the supply is to be discontinued (subject to subsection (8)),whichever is the earlier.
- (7) Where a supply is made by an interim licensee by virtue of a direction given under subsection (3)—
- (a) the supply by the interim licensee is to be treated as having begun on the date on which the previous licensee ceased to supply the premises,
  - (b) the terms and conditions in accordance with which the supply is to be made are to be—
    - (i) those provided for by a scheme made under section 63AE, or
    - (ii) such other terms and conditions as may be agreed between the interim licensee and the owner or occupier of the premises, and
  - (c) subject to subsection (12), the supply is to be made until it is discontinued in accordance with the terms and conditions mentioned in paragraph (b).
- (8) A notice under subsection (6)(b)(iv) may not be served before the end of the period of three months beginning with the day on which the supply by the previous licensee ceased.
- (9) Subsections (10) and (11) apply if, within a period of three months beginning with the date on which the previous licensee ceased to supply the premises with water, the owner or occupier of the premises serves notice—
- (a) under section 63AA or 63AB, on the water undertaker continuing the supply under subsection (2), or
  - (b) in accordance with the terms and conditions mentioned in subsection (7)(b), on the interim licensee continuing the supply by virtue of a direction given under subsection (3),
- that instead another water supply licensee (“the new licensee”) is to continue the supply of water to the premises which was made by the previous licensee.
- (10) The notice must—
- (a) specify the time from which the new licensee is to continue the supply in question, and

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(b) be served in accordance with the code issued under section 63AF.

- (11) In the case of a notice served as mentioned in subsection (9)(a), the supply by the new licensee is to be treated as having begun on the date on which the previous licensee ceased to supply the premises.
- (12) Supplies of water under this section are subject to sections 60 to 63.

### **63AD Interim duty: supplementary**

- (1) A water undertaker is not required by virtue of section 63AC to provide a supply of water to any premises if the provision of the supply would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (2) The Authority may determine, in a case referred to it by the owner or occupier of the premises in question, whether the condition in subsection (1) is satisfied in relation to a water undertaker.
- (3) Before the Authority determines whether that condition is satisfied, it must consult—
- (a) the Secretary of State, in the case of a water undertaker whose area is wholly or mainly in England;
  - (b) the Welsh Ministers, in the case of a water undertaker whose area is wholly or mainly in Wales.
- (4) The supply of water to any premises by a water undertaker under section 63AC does not prevent a proposed supply to those premises by that undertaker under section 55 from being regarded as a new supply for the purposes of that section.
- (5) Where a duty is imposed by section 63AC(2), or by virtue of a direction given under section 63AC(3), in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage is actionable at the suit of that owner or occupier.
- (6) But in any proceedings brought against a water undertaker or water supply licensee in pursuance of subsection (5), it is a defence for the undertaker or licensee to show that the undertaker or, as the case may be, the licensee took all reasonable steps and exercised all due diligence to avoid the breach.
- (7) For the purposes of section 63AC, premises which are outside a water undertaker's area are to be treated as being within that area if they are supplied with water using the undertaker's supply system.
- (8) In subsection (7), the reference to the undertaker's supply system is to be construed in accordance with section 17B.



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### **63AE Interim licensees: schemes for terms and conditions**

- (1) A person who is an eligible water supply licensee for the purposes of section 63AC must make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to a supply of water made by the licensee by virtue of a direction given under section 63AC(3).
- (2) A scheme under this section may make different provision for different purposes, or for different areas.
- (3) As soon as practicable after a water supply licensee makes or revises a scheme under this section the licensee is to—
  - (a) publish the scheme, or revised scheme, on the licensee's website, and
  - (b) send a copy of the scheme, or revised scheme, to the Authority.
- (4) The Authority may give a direction that terms and conditions applying to a supply of water in accordance with a scheme under this section must be modified as specified in the direction.
- (5) A direction under subsection (4) may apply—
  - (a) generally to terms and conditions applying in accordance with a scheme under this section, or
  - (b) to terms and conditions so applying in any particular case.
- (6) It is the duty of a water supply licensee to comply with a direction under subsection (4), and this duty is enforceable under section 18.

### **63AF Interim duty: code**

- (1) The Authority must issue a code in relation to—
  - (a) supplies of water under section 63AC, and
  - (b) its power of direction under section 63AC(3) (power to direct that eligible water supply licensee makes interim supply).
- (2) The code may, in particular, make provision about—
  - (a) the procedure for electing to be an eligible water supply licensee for the purposes of section 63AC;
  - (b) the procedure for temporarily suspending such an election under section 63AC(5)(b);
  - (c) the circumstances in which the Authority's power of direction under section 63AC(3) or 63AE(4) may or may not be exercised;
  - (d) how the Authority will determine the date on which a water supply licensee ceased to supply premises with water for the purposes of section 63AC;
  - (e) terms and conditions contained in schemes made under section 63AE;
  - (f) eligible water supply licensees informing owners or occupiers of premises of their schemes for terms and conditions made

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- under section 63AE, before agreeing any terms and conditions as mentioned in section 63AC(7)(b)(ii);
- (g) the giving of notices as mentioned in section 63AC(9) (that a new licensee is to continue the supply of water made by the previous licensee) including, in particular, provision about—
- (i) the earliest time that a notice may specify as the time from which a new licensee is to continue the supply of water made by a previous licensee;
  - (ii) the procedure for serving a notice.
- (3) If the Authority considers that a water supply licensee is not acting as required by provision contained in the code as mentioned in subsection (2) (e) or (f), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a water supply licensee to comply with a direction under subsection (3), and this duty is enforceable under section 18.
- (5) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (6) References in section 63AC to the code issued under this section are to the code issued under this section that has effect at the time in question.”

VALID FROM 06/03/2017

### 32 Interim duty: sewerage services

After section 110J of the Water Industry Act 1991 (as inserted by section 9) there is inserted—

*“Provision of sewerage services by sewerage licensees etc*

#### **110K Provision by sewerage licensee**

- (1) The owner or occupier of any premises may serve a notice on a sewerage undertaker—
  - (a) informing the undertaker that sewerage services to the premises are to be provided by a sewerage licensee, and
  - (b) specifying the time after which the undertaker will no longer be required to provide sewerage services to the premises.
- (2) Where the charges for the sewerage services provided by the undertaker are, under Chapter 1 of Part 5 of this Act, fixed in relation to the premises by reference to volume, the time specified in the notice is to fall at least two working days after the notice is served.
- (3) In this section a reference to two working days is a reference to a period of 48 hours calculated after disregarding any time falling on—
  - (a) a Saturday or Sunday, or

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- (b) Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

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

- (1) This section applies where—
  - (a) a sewerage licensee (“the previous licensee”) ceases to provide sewerage services to any premises, and
  - (b) the owner or occupier of the premises has not notified the sewerage undertaker in whose area the premises are that—
    - (i) he has made arrangements for the continuation of the provision of sewerage services to the premises, or
    - (ii) he intends any provision of sewerage services to the premises to cease.
- (2) It is to be the duty of the sewerage undertaker to continue to provide the sewerage services to the premises which were provided by the previous licensee.
- (3) But the Authority may give a direction to an eligible sewerage licensee (an “interim licensee”) providing that it is to be the duty of that licensee to provide the sewerage services instead.
- (4) An “eligible sewerage licensee” is a sewerage licensee with a retail authorisation who has elected to be an eligible sewerage licensee for the purposes of this section in accordance with the code issued under section 110O.
- (5) If the Authority proposes to give a direction under subsection (3) to an eligible sewerage licensee—
  - (a) the Authority must give notice of the proposed direction to the licensee, and
  - (b) the licensee may, in accordance with the code issued under section 110O, temporarily suspend the election made by the licensee as mentioned in subsection (4), so that the proposed direction cannot be given to the licensee.
- (6) Where sewerage services are provided by an undertaker under subsection (2)—
  - (a) the charges payable in respect of the provision of the services are to be fixed from time to time by a charges scheme under section 143, and
  - (b) the services are to be provided until—
    - (i) services are provided by an interim licensee by virtue of a direction under subsection (3),
    - (ii) services are provided by a sewerage licensee following the service of a notice under section 110K, or
    - (iii) services are provided to the premises by another sewerage undertaker following the service of a notice by the owner or occupier of the premises on the undertaker providing services under subsection (2) specifying the time after

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which the undertaker will no longer be required to provide  
 sewerage services to the premises (see section 110M(5)),  
 whichever is the earlier.

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

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

- (1) Where a duty is imposed by section 110L(2), or by virtue of a direction given under section 110L(3), in respect of any premises, any breach of the duty which causes the owner or occupier of the premises to sustain loss or damage is actionable at the suit of that owner or occupier.
- (2) But in any proceedings brought against a sewerage undertaker or sewerage licensee in pursuance of subsection (1), it is a defence for the undertaker or

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licensee to show that the undertaker or, as the case may be, the licensee took all reasonable steps and exercised all due diligence to avoid the breach.

- (3) For the purposes of section 110L, premises which are outside a sewerage undertaker's area are to be treated as being within that area if they are provided with sewerage services using the undertaker's sewerage system.
- (4) In subsection (3), the reference to the undertaker's sewerage system is to be construed in accordance with section 17BA(7).
- (5) Section 110K(2) and (3) apply to a notice served under section 110L(6)(b)(iii) as they apply to a notice served under section 110K.

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

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

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

- (1) The Authority must issue a code in relation to—
  - (a) the provision of sewerage services under section 110L, and
  - (b) its power of direction under section 110L(3) (power to direct that eligible sewerage licensee provides interim sewerage services).
- (2) The code may, in particular, make provision about—
  - (a) the procedure for electing to be an eligible sewerage licensee for the purposes of section 110L;
  - (b) the procedure for temporarily suspending such an election under section 110L(5)(b);

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- (c) the circumstances in which the Authority's power of direction under section 110L(3) or 110N(4) may or may not be exercised;
  - (d) how the Authority will determine the date on which a sewerage licensee ceased to provide sewerage services to premises for the purposes of section 110L;
  - (e) terms and conditions contained in schemes made under section 110N;
  - (f) eligible sewerage licensees informing owners or occupiers of premises of their schemes for terms and conditions made under section 110N, before agreeing any terms and conditions as mentioned in section 110L(7)(b)(ii);
  - (g) the giving of notices as mentioned in section 110L(8) (that a new licensee is to continue the provision of the sewerage services provided by the previous licensee) including, in particular, provision about—
    - (i) the earliest time that a notice may specify as the time from which a new licensee is to continue the provision of the sewerage services provided by a previous licensee;
    - (ii) the procedure for serving a notice.
- (3) If the Authority considers that a sewerage licensee is not acting as required by provision contained in the code as mentioned in subsection (2)(e) or (f), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.
- (4) It is the duty of a sewerage licensee to comply with a direction under subsection (3), and this duty is enforceable under section 18.
- (5) The Authority must from time to time review the code and, if appropriate, issue a revised code.
- (6) References in section 110L to the code issued under this section are to the code issued under this section that has effect at the time in question.”

### 33 Notice of agreements within section 142(2)(b)

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 142 (powers of undertakers to charge), after subsection (6) there is inserted—
- “(6A) If an undertaker makes an agreement that falls within subsection (2)(b), it must notify the Authority of the provisions of the agreement.
- (6B) The requirement in subsection (6A) is enforceable by the Authority under section 18.”
- (3) In section 195 (the Water Services Regulation Authority's register relating to relevant undertakers and licensees)—
- (a) in subsection (3) (power to direct that provisions of an undertaker's appointment etc are not entered in the register), after “any provision” there is inserted “ or, in the case of information that falls to be entered under subsection (3B), any information ”;



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- (b) in subsection (3), after “that provision” there is inserted “ or that information ”;
- (c) after subsection (3A) there is inserted—

“(3B) Subject to any direction given under subsection (3), the Authority must cause to be entered on the register such information about an agreement falling within section 142(2)(b) as the Authority thinks fit.

(3C) Subsection (3B) has effect in relation to agreements made after the coming into force of section 33 of the Water Act 2014.”

### 34 Register relating to undertakers and licensees

- (1) Section 195 of the Water Industry Act 1991 (the Water Services Regulation Authority's register relating to undertakers and licensees) is amended as follows.
- (2) In subsection (1) (register to be maintained in a certain place, in a certain form and for certain purposes), the words from “for the purposes” to the end are repealed.
- (3) After subsection (3C) (inserted by section 33) there is inserted—

“(3D) Subject to any direction given under subsection (3), the Authority must cause to be entered on the register the provisions of—

- (a) a notice under section 40F(3) (reduction in charges payable under a bulk supply agreement);
- (b) a notice under section 66EA(3) (reduction in charges payable under a section 66D agreement);
- (c) a notice under section 110G(3) (reduction in charges payable under a main connection agreement);
- (d) a notice under section 117J(3) (reduction in charges payable under a section 117E agreement).”

#### Commencement Information

**140** S. 34 not in force at Royal Assent; s. 34(1)(2) in force at 14.7.2014, see s. 94(2)(i)

### 35 Operation of register

In section 195 of the Water Industry Act 1991, for subsections (4) to (6) (inspection of the register and fees for certified copies or extracts) there is substituted—

“(4) The Authority must publish a notice setting out—

- (a) the times at which the contents of the register are for the time being available for inspection by the public;
- (b) the fees that must be paid for, or in connection with, an inspection of the contents of the register;
- (c) the fees that must be paid for, or in connection with, the supply by the Authority of—
  - (i) a copy of the contents of the register, certified by the Authority as being a true copy, or
  - (ii) an extract from the contents of the register, certified by the Authority as being a true extract.

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- (4A) The Authority must publish the notice in such manner as the Authority thinks appropriate for bringing it to the attention of the persons who, in the Authority's opinion, are likely to be affected by it.
- (4B) The Authority must make the contents of the register available for inspection by the public—
  - (a) during such hours, and
  - (b) on payment of such fees,
 as are set out in the notice under subsection (4) that is for the time being in force.”

### **36 Obtaining information for enforcement purposes**

- (1) Section 203 of the Water Industry Act 1991 (power to acquire information for enforcement purposes) is amended as follows.
- (2) For subsection (1) there is substituted—
  - “(1) The Minister or the Authority may serve a notice under subsection (2) in respect of—
    - (a) a company that holds an appointment as a relevant undertaker, if of the opinion that Condition 1 is satisfied, or
    - (b) a person who holds a licence under Chapter 1A of Part 2, if of the opinion that Condition 2 is satisfied.
  - (1A) Condition 1 is that the company—
    - (a) may be contravening, or may have contravened, a condition of the appointment or a statutory or other requirement enforceable under section 18,
    - (b) may be causing or contributing to, or may have caused or contributed to, a contravention by another company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,
    - (c) may be causing or contributing to, or may have caused or contributed to, a contravention by a person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,
    - (d) has not met the standards prescribed under section 38(2) in connection with the provision of supplies of water, or
    - (e) has not met the standards prescribed under section 95(2) in connection with the provision of sewerage services.
  - (1B) Condition 2 is that the person—
    - (a) may be contravening, or may have contravened, a condition of the licence or a statutory or other requirement enforceable under section 18,
    - (b) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,



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- (c) may be causing or contributing to, or may have caused or contributed to, a contravention by another person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,
  - (d) has not met the standards prescribed under section 38ZA(2) in connection with the provision of water supplies, or
  - (e) has not met the standards prescribed under section 95ZA(2) in connection with the provision of sewerage services.
- (1C) The notice may be served—
- (a) on any person;
  - (b) for any purpose connected with powers under Chapter 2 of Part 2.”
- (3) In subsections (2) and (6), for “Secretary of State”, in each place where those words occur, there is substituted “ Minister ”.
- (4) In subsection (7), for “or licence” there is substituted “ or a person holding such a licence ”.
- (5) After subsection (7) there is inserted—
- “(8) The Minister” means—
- (a) the Secretary of State, in respect of—
    - (i) any relevant undertaker whose area is wholly or mainly in England;
    - (ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker;
  - (b) the Welsh Ministers, in respect of—
    - (i) any relevant undertaker whose area is wholly or mainly in Wales;
    - (ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker.
- (9) In this section—
- (a) references to the supply system of a water undertaker are to be construed in accordance with section 17B;
  - (b) references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(7).”

VALID FROM 01/04/2016

*Appeals relating to codes*

**37 Appeals relating to revisions of codes**

- (1) The Water Industry Act 1991 is amended as follows.
- (2) After section 207 there is inserted—

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## “PART 7A

### FURTHER PROVISION ABOUT REGULATION

#### *Appeals relating to revisions of codes*

#### **207A Appeals to the CMA**

- (1) The Secretary of State may by regulations provide for an appeal to lie to the CMA from—
  - (a) a decision by the Authority to make a revision to a designated code;
  - (b) a decision by the Authority, following consultation under this Act about a proposed revision to a designated code, not to make the proposed revision.
- (2) For the purposes of this section a designated code is a code, or a part of a code, issued by the Authority under or by virtue of this Act that is designated for the purposes of this section by regulations under this section.
- (3) The regulations may specify descriptions of revisions by reference to which an appeal under the regulations may not be brought.
- (4) Regulations made under subsection (3) may provide—
  - (a) for the exclusion of certain descriptions of revisions to operate only in such cases as may be determined in accordance with the regulations;
  - (b) for a determination in accordance with the regulations to be made—
    - (i) by such persons,
    - (ii) in accordance with such procedures, and
    - (iii) by reference to such matters and the opinions of such persons (including the Authority),
 as may be provided for in the regulations.
- (5) The regulations may—
  - (a) specify the persons or descriptions of persons eligible to bring an appeal;
  - (b) specify conditions to be satisfied by a person wishing to bring an appeal.
- (6) Regulations made under subsection (5) may—
  - (a) make different provision in relation to different codes or different parts of a code;
  - (b) provide for a representative body or association to bring an appeal.
- (7) The regulations must—
  - (a) provide for appeals to be brought only where the CMA grants permission for an appeal;
  - (b) provide for the grounds on which the CMA may refuse permission.

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- (8) Before making regulations under this section the Secretary of State must consult—
- (a) the Welsh Ministers;
  - (b) the Authority;
  - (c) such other persons as the Secretary of State considers appropriate.

### **207B Procedure on appeals**

- (1) Except where otherwise provided, the functions of the CMA with respect to appeals under section 207A are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- (2) Schedule 16 (provision as to procedure on appeals) has effect.

### **207C Determination of appeals**

- (1) The Secretary of State may by regulations provide for the determination by the CMA of an appeal under section 207A.
- (2) The regulations must require the CMA in determining the appeal to have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard in exercising or performing the powers and duties mentioned in section 2(1).
- (3) The regulations must provide that the CMA in determining the appeal—
  - (a) may have regard to any matter to which the Authority was not able to have regard in the case of the decision appealed against, but
  - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in that case had it had the opportunity of doing so.
- (4) The regulations may specify the grounds on which an appeal may be allowed.
- (5) The grounds specified by the regulations may include the following—
  - (a) that the Authority failed properly to have regard to the matters mentioned in subsection (2);
  - (b) that the Authority failed properly to have regard to the purposes for which the code in question is issued;
  - (c) that the Authority failed to give the appropriate weight to one or more of those matters or purposes.
- (6) The regulations may make provision for the steps that the CMA is to take—
  - (a) if it allows the appeal;
  - (b) if it does not allow the appeal.
- (7) Provision under subsection (6)(a) may include remitting a matter to the Authority for reconsideration and redetermination in accordance with directions given by the CMA.
- (8) The regulations may make provision as to the decision of the CMA on the appeal, including in particular provision for the decision—
  - (a) to be contained in an order made by the CMA;

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- (b) to set out the reasons for the decision;
  - (c) to take effect—
    - (i) at the time specified in the order, or
    - (ii) at the time determined in accordance with provision set out in the order;
  - (d) to be notified to the persons who were parties to the appeal (see paragraph 2 of Schedule 16); and
  - (e) to be published.
- (9) Provision under subsection (8)(e) may allow the CMA to exclude from publication any information which it is satisfied is—
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
  - (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.”
- (3) In section 213 (powers to make regulations), in subsection (1A) (affirmative resolution procedure to apply on first exercise of power), for “each of sections 89 and 90 above, the instrument” there is substituted “—
- (a) each of sections 89 and 90, and
  - (b) each of sections 207A and 207C and Schedule 16;
- the instrument”.
- (4) After Schedule 15 there is inserted the Schedule set out in Schedule 6 to this Act.

*Guidance relating to rules about charges*

**38 Guidance relating to rules about charges**

In the Water Industry Act 1991, after section 144ZD there is inserted—

*“General guidance on charges*

**144ZE General guidance on charges**

- (1) The Minister must issue guidance about the principles to be applied by the Authority in determining the provisions of—
  - (a) rules under section 66E;
  - (b) rules under section 117I;
  - (c) rules under section 143B.
- (2) The Minister may issue guidance about the principles to be applied by the Authority in determining the provisions of—
  - (a) rules under section 40E;
  - (b) rules under section 51CD;
  - (c) rules issued in accordance with regulations under section 66M;
  - (d) rules under section 105ZF;

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- (e) rules under section 110F;
  - (f) rules under section 144ZA.
- (3) Guidance under subsection (1) or (2) may include other guidance about the provisions of any of the rules mentioned in subsection (1) or (2).
- (4) The Minister may issue guidance about the principles to be applied by the Authority in determining the contents of other documents produced by the Authority about charges that may be imposed by relevant undertakers or water supply or sewerage licensees.
- (5) Guidance under subsection (4) may include other guidance about the contents of the documents mentioned in subsection (4).
- (6) The Authority must have regard to guidance issued under this section when making rules to which the guidance relates (as well as to any guidance relating to those rules issued under another provision of this Act).
- (7) If—
- (a) the Minister issues guidance under this section in respect of rules made under a particular provision, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise rules made by it under that provision,
- the Authority must issue revised rules under that provision.
- (8) Before issuing guidance under this section, the Minister must—
- (a) prepare a draft of the proposed guidance;
  - (b) consult the relevant persons about the draft;
  - (c) comply with the requirements of section 144ZF.
- (9) The relevant persons are—
- (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any relevant undertakers likely to be affected by the proposed guidance;
  - (e) any water supply licensees or sewerage licensees likely to be affected by the proposed guidance;
  - (f) such other persons as the Minister thinks appropriate.
- (10) The Minister may from time to time revise guidance issued under this section and issue revised guidance.
- (11) Subsections (8) and (9) apply to revised guidance as they apply to the original guidance.
- (12) The Minister must arrange for the publication of guidance issued under this section.
- (13) In this section “the Minister” means—
- (a) the Secretary of State, in relation to relevant undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, in relation to relevant undertakers whose areas are wholly or mainly in Wales.

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### **144ZF Guidance under section 144ZE: procedure**

- (1) Before issuing guidance under section 144ZE, the Secretary of State must lay a draft of the proposed guidance before both Houses of Parliament.
- (2) The Secretary of State must not issue the guidance until after the period of 40 days beginning with—
  - (a) the day on which the draft is laid before both Houses of Parliament, or
  - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (3) If before the end of that period either House resolves that the guidance should not be issued, the Secretary of State may not issue it.
- (4) In reckoning any period of 40 days for the purposes of subsection (2), no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses are adjourned for more than four days.
- (5) Before issuing guidance under section 144ZE, the Welsh Ministers must lay a draft of the proposed guidance before the Assembly.
- (6) The Welsh Ministers must not issue the guidance until after the period of 40 days beginning with the day on which the draft is laid before the Assembly.
- (7) If before the end of that period the Assembly resolves that the guidance should not be issued, the Welsh Ministers may not issue it.
- (8) In reckoning any period of 40 days for the purposes of subsection (6), no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than four days.
- (9) Nothing in this section prevents the Secretary of State and the Welsh Ministers issuing a single document containing guidance under section 144ZE, and preparing draft guidance accordingly.”

#### **Commencement Information**

**I41** S. 38 in force at 1.1.2015 for specified purposes by [S.I. 2014/3320](#), **art. 2(1)(b)** (with [art. 3](#))

**I42** S. 38 in force at 6.4.2015 for W. for specified purposes by [S.I. 2015/773](#), **art. 2(3)(b)** (with [art. 6](#))

PROSPECTIVE

### *Adjudication functions*

#### **39 Exercise of adjudication functions by other persons**

After section 207C of the Water Industry Act 1991 (inserted by section 37) there is inserted—

*Status: Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.*

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## “Adjudication

### **207D Exercise of adjudication functions by other persons**

- (1) The Minister may by order made by statutory instrument provide that any of the Authority's adjudication functions (see subsection (4)) is to be exercised—
  - (a) on the Authority's behalf, by such person as may be specified in the order, or
  - (b) either by the Authority or, on the Authority's behalf, by such person as may be specified in the order, at the option of the Authority in any particular case.
- (2) An order under subsection (1) may—
  - (a) provide for requirements applying to the exercise of a function by the Authority to apply to the exercise of the function by another person;
  - (b) require the Authority to produce guidance as to the exercise by another person of one of the Authority's adjudication functions and to keep such guidance up to date;
  - (c) require a person exercising one of the Authority's adjudication functions to have regard to—
    - (i) any guidance to which the Authority would have regard in exercising that function;
    - (ii) any guidance produced by the Authority as to the exercise of that function.
- (3) An order under subsection (1) may—
  - (a) make different provision for different purposes;
  - (b) apply any primary or secondary legislation with or without modifications;
  - (c) make supplemental, consequential and transitional provision.
- (4) For the purposes of this section, the Authority's adjudication functions are—
  - (a) the determination of any matter referred to it for determination under section 30A;
  - (b) the Authority's functions under any of the following—
    - regulations made by virtue of section 38(4) (power to prescribe by regulations standards of performance for water undertakers as regards water supply in individual cases: provision for disputes etc);
    - regulations made by virtue of section 38ZA(4) (power to prescribe by regulations standards of performance for water supply licensees as regards water supply in individual cases: provision for disputes etc);
    - regulations made by virtue of section 95(4) (power to prescribe by regulations standards of performance for sewerage undertakers as regards sewerage services in individual cases: provision for disputes etc);
    - regulations made by virtue of section 95ZA(4) (power to prescribe by regulations standards of performance for sewerage



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licensees as regards sewerage services in individual cases:  
 provision for disputes etc);  
 section 105 (appeals with respect to adoption of sewer etc);  
 section 105B (appeals relating to schemes for the adoption of sewers etc);  
 section 110 (determination of disputes with respect to cross boundary sewers);  
 section 112(2) and (3) (appeal against requirement that proposed drain or sewer be constructed so as to form part of general system);  
 section 122 (appeals relating to applications to discharge trade effluent);  
 section 126 (appeals with respect to variations of consent to discharge trade effluent);  
 section 128 (application for variation of time for discharge of trade effluent);  
 section 181 (investigation of complaints with respect to the exercise of works powers on private land);

but do not include any functions as to enforcement under section 18.

(5) In this section—

“the Minister”, in relation to an adjudication function of the Authority, means—

(a) the Secretary of State, to the extent that the function is to be exercised—

(i) in relation to a relevant undertaker whose area is wholly or mainly in England,

(ii) in relation to a water supply licensee using the supply system of such an undertaker (see section 17B), or

(iii) in relation to a sewerage licensee using the sewerage system of such an undertaker (see section 17BA);

(b) the Welsh Ministers, to the extent that the function is to be exercised—

(i) in relation to a relevant undertaker whose area is wholly or mainly in Wales, or

(ii) in relation to a water supply licensee using the supply system of such an undertaker (see section 17B);

“primary legislation” means an Act or an Act or Measure of the Assembly;

“secondary legislation” means an instrument made under primary legislation.

(6) A statutory instrument containing an order made by the Secretary of State under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(7) A statutory instrument containing an order made by the Welsh Ministers under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Assembly.”



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### *Drinking water inspectorate*

## **40 Charging of fees by assessors for the enforcement of water quality**

(1) After section 86 of the Water Industry Act 1991 there is inserted—

### **“86ZA Charging of fees**

- (1) The Secretary of State may by order made by statutory instrument confer power on the Chief Inspector of Drinking Water to charge fees for the exercise of a function by an inspector appointed by the Secretary of State under section 86 (and to determine their amount).
- (2) The Welsh Ministers may by order made by statutory instrument confer power on the designated person to charge fees for the exercise of a function by an inspector appointed by the Welsh Ministers under section 86 (and to determine their amount).
- (3) In subsection (2) “the designated person” means—
  - (a) the Chief Inspector of Drinking Water for Wales, or
  - (b) if the same person is designated under section 86(1A) and (1B), the Chief Inspector of Drinking Water in that person's capacity as a person designated by the Welsh Ministers under section 86(1B).
- (4) An order under this section may include consequential, supplementary, incidental or transitional provision, or savings.
- (5) A statutory instrument containing an order made by the Secretary of State under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument containing an order made by the Welsh Ministers under this section is subject to annulment in pursuance of a resolution of the Assembly.
- (7) Subsection (8) applies in relation to a statutory instrument containing both—
  - (a) an order under this section made by the Secretary of State, and
  - (b) an order under this section made by the Welsh Ministers.
- (8) If in accordance with subsection (5) or (6)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or
  - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.”

(2) In the Public Bodies Act 2011—

- (a) subsections (3) and (4) of section 14 (power of the Welsh Ministers to modify by order the funding arrangements of inspectors appointed under section 86 of the Water Industry Act 1991) are repealed;

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- (b) in Schedule 4 (bodies and offices where power to modify funding arrangements), the entry relating to inspectors appointed by the Secretary of State under section 86 of the Water Industry Act 1991 is repealed.

**Commencement Information**

**I43** S. 40(1) in force at 14.7.2014 by S.I. 2014/1823, art. 2(a)

*Provision of public sewers: premises in Wales*

**41 Disputes about the provision of public sewers: premises in Wales**

- (1) Section 101A of the Water Industry Act 1991 (further duty to provide sewers) is amended as follows.
- (2) In subsection (7)—
- (a) for “Any dispute” there is substituted “ Subsections (7A) and (7B) apply where there is a dispute ”;
  - (b) the words following paragraph (c) are repealed.
- (3) After subsection (7) there is inserted—
- “(7A) The dispute is to be determined by the appropriate person and may be referred to the appropriate person for determination by either of the parties to the dispute.
- (7B) If the dispute is between a sewerage undertaker and an owner or occupier of premises in Wales, the NRBW must provide advice in relation to any of the matters mentioned in subsection (7)(a) to (c) if so requested by—
- (a) either of the parties to the dispute, or
  - (b) the appropriate person.
- (7C) Any advice provided by the NRBW under subsection (7B) must be provided to both parties to the dispute and to the appropriate person.”
- (4) In subsections (8)(a) and (9), for “subsection (7)” there is substituted “ subsection (7A) ”.
- (5) In subsections (8), (9), (10) and (11), for “appropriate agency”, in each place those words occur, there is substituted “ appropriate person ”.
- (6) In subsection (11), in paragraph (b)—
- (a) for “the NRBW” there is substituted “ the Welsh Ministers ”;
  - (b) at the end there is inserted “, or such person as the Welsh Ministers may from time to time appoint as the appropriate person in relation to such disputes.”
- (7) After subsection (11) there is inserted—
- “(12) A person may be appointed as the appropriate person under subsection (11) (b) only if 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—

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- (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.”

#### Commencement Information

**I44** S. 41 in force at 1.11.2015 by S.I. 2015/1786, art. 2 (with art. 3)

## CHAPTER 4

### RETAIL EXIT: NON-HOUSEHOLD PREMISES

#### 42 Retail exit: non-household premises

- (1) The Secretary of State may by regulations (“exit regulations”)—
  - (a) make provision for a relevant undertaker whose area is wholly or mainly in England to apply to withdraw from the non-household retail market in relation to that area,
  - (b) make provision about the determination of an application under paragraph (a) (an “exit application”),
  - (c) make provision for and in connection with the transfer of so much of a relevant undertaker's undertaking as relates to the non-household retail market to an eligible licensee or licensees, and
  - (d) make provision about the operation of the water industry in relation to an area in respect of which an exit application has been granted (a “retail exit area”).
- (2) Provision under subsection (1)(a) may require a company that is a water undertaker and a sewerage undertaker to make an exit application that relates both to its functions as a water undertaker and to its functions as a sewerage undertaker, subject to such exceptions as exit regulations may specify.
- (3) Exit regulations may include provision for protecting customers affected by a relevant undertaker's withdrawal from the non-household retail market.
- (4) For the purposes of this Chapter—
  - (a) a reference to a water undertaker withdrawing from the non-household retail market in relation to an area is a reference to a water undertaker ceasing, in relation to that area, to exercise such functions relating to the supply of water to non-household premises as are specified in exit regulations, and
  - (b) a reference to a sewerage undertaker withdrawing from the non-household retail market in relation to an area is a reference to a sewerage undertaker ceasing, in relation to that area, to exercise such functions relating to the provision of sewerage services in respect of non-household premises (including trade effluent functions) as are specified in exit regulations;and a reference to the non-household retail market is to be construed accordingly.
- (5) Exit regulations may—

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- (a) prohibit a water undertaker from exercising, in relation to a retail exit area, such functions relating to the supply of water to non-household premises as are specified in the regulations;
- (b) prohibit a sewerage undertaker from exercising, in relation to a retail exit area, such functions relating to the provision of sewerage services in respect of non-household premises (including trade effluent functions) as are specified in the regulations.

#### Commencement Information

**I45** S. 42 in force at 6.4.2015 by [S.I. 2015/773](#), **art. 2(2)(b)(i)** (with art. 5)

### 43 Application for retail exit

- (1) Exit regulations about exit applications must make provision requiring a relevant undertaker to apply to the Secretary of State, and may include—
  - (a) provision requiring a relevant undertaker to take such steps as the regulations may specify before making an application;
  - (b) provision as to the form and manner in which an application is to be made and as to the contents of an application;
  - (c) provision about payment to the Secretary of State of a fee of an amount specified in or determined under the regulations;
  - (d) provision about the information that is to accompany an application;
  - (e) provision for the Secretary of State to require a relevant undertaker to provide such further information as the Secretary of State may require in order to make a determination;
  - (f) provision as to the grounds on which an application may be refused;
  - (g) provision for the Secretary of State to grant an application subject to conditions.
- (2) Provision under subsection (1)(a) may require a relevant undertaker—
  - (a) to consult—
    - (i) its non-household customers and its other customers,
    - (ii) the WSRA,
    - (iii) the Chief Inspector of Drinking Water,
    - (iv) the Consumer Council for Water, and
    - (v) any other person specified in the regulations;
  - (b) to prepare and publish a report assessing the effect on non-household customers and other customers if the undertaker withdraws from the non-household retail market;
  - (c) to publish notice of its proposed exit application in such manner as the regulations may specify.
- (3) The grounds that may be specified under subsection (1)(f) include—
  - (a) grounds relating to the public interest or to the interests of a section of the public;
  - (b) grounds relating to the interests of non-household customers or other customers;

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- (c) grounds relating to costs associated with a transfer of part of the relevant undertaker's undertaking;
  - (d) grounds relating to the eligible licensee or licensees to which a transfer of part of the relevant undertaker's undertaking is proposed to be made.
- (4) The conditions that may be imposed under subsection (1)(g) include—
- (a) conditions as to the persons who are to pay the costs associated with a transfer of a part of the relevant undertaker's undertaking;
  - (b) conditions as to the application of money received by the relevant undertaker in connection with a transfer of a part of its undertaking;
  - (c) conditions about the relevant undertaker giving consent to modifications of the undertaker's conditions of appointment;
  - (d) conditions about an eligible licensee to which a transfer of part of the relevant undertaker's undertaking is proposed to be made giving consent to modifications of the conditions of its water supply licence or sewerage licence;
  - (e) conditions about the treatment of non-household customers affected by the transfer of part of the relevant undertaker's undertaking.
- (5) Exit regulations may make provision about how particular descriptions of customers and premises are affected by a relevant undertaker's withdrawal from the non-household retail market, including in particular any of the following—
- (a) premises to which the supply of water has been disconnected,
  - (b) premises that are to be demolished,
  - (c) premises that are temporarily unoccupied,
  - (d) premises in relation to which the owner or occupier has served notice under section 63AA of the Water Industry Act 1991 (supply by water supply licensee: domestic supply),
  - (e) premises in relation to which the owner or occupier has served notice under section 63AB of the Water Industry Act 1991 (supply by water supply licensee: non-domestic supply), and
  - (f) premises in relation to which the owner or occupier has served notice under section 110K of the Water Industry Act 1991 (provision by sewerage licensee).
- (6) Provision under subsection (5) may include provision about how exit applications deal with particular descriptions of customers and premises.
- (7) Exit regulations may make provision about the disclosure by a relevant undertaker of such information as the regulations may specify about—
- (a) its non-household customers, and
  - (b) the charges payable by them (whether payable under a charges scheme under section 143 of the Water Industry Act 1991 or under an agreement).
- (8) Exit regulations may specify—
- (a) the persons to whom the information may be disclosed;
  - (b) the purposes for which it may be disclosed.

#### **Commencement Information**

**146** S. 43 in force at 6.4.2015 by S.I. 2015/773, art. 2(2)(b)(ii) (with art. 5)

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#### **44 Eligible licensees**

- (1) Exit regulations may—
  - (a) make provision for a relevant undertaker to specify in its exit application the eligible licensee or licensees to which it proposes to transfer a part of its undertaking;
  - (b) make provision for the WSRA to direct one or more eligible licensees to accept the transfer of a part of the relevant undertaker's undertaking.
- (2) In this Chapter an “eligible licensee” is a company—
  - (a) that has a water supply licence with a retail authorisation or a sewerage licence with a retail authorisation, or both, and
  - (b) that has elected to be an eligible licensee for the purposes of this Chapter.
- (3) Exit regulations may—
  - (a) provide for an eligible licensee to be specified in an exit application only if the licensee agrees to be so specified;
  - (b) provide for the WSRA to give notice before giving a direction under subsection (1)(b);
  - (c) provide for an eligible licensee to temporarily suspend an election under subsection (2)(b) so that it may not be given a direction under subsection (1)(b).
- (4) Exit regulations may make provision about electing to be an eligible licensee, and may in particular—
  - (a) provide for a company to satisfy such criteria as are set out in a code published by the WSRA before the company may elect to be an eligible licensee;
  - (b) provide for the WSRA to assess whether a company satisfies those criteria;
  - (c) provide for the WSRA to publish a code setting out—
    - (i) the criteria mentioned in paragraph (a), and
    - (ii) how it conducts such assessments;
  - (d) provide for the WSRA to comply with the code in making such assessments.
- (5) Exit regulations may—
  - (a) allow an eligible licensee, to which a transfer of a part of a relevant undertaker's undertaking is proposed to be made, to be a company associated with the undertaker,
  - (b) require the eligible licensee to which such a transfer is made to be such a company, or
  - (c) prohibit such a transfer being made to such a company.
- (6) For the purposes of this section, a relevant undertaker is associated with an eligible licensee if one of them is a subsidiary of the other or both are subsidiaries of the same body corporate.

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#### **Commencement Information**

**I47** S. 44 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(iii\)](#) (with art. 5)

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**Status:** Point in time view as at 01/01/2016. This version of this part contains provisions that are not valid for this point in time.

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## 45 Transfer of undertaking

- (1) Exit regulations about the transfer of a part of a relevant undertaker's undertaking may include provision for the making of a scheme to transfer property, rights and liabilities where an exit application has been granted.
- (2) Exit regulations about the transfer of a part of a relevant undertaker's undertaking may include provision about arrangements under Chapter 1 of Part 5 of the Water Industry Act 1991 for fixing, demanding and recovering charges.
- (3) Provision under subsection (2) may include—
  - (a) provision for and in connection with treating such arrangements as if they were agreements between the undertaker and the person liable to pay such charges;
  - (b) provision about the terms and conditions of such agreements.
- (4) Exit regulations may make provision for a scheme under subsection (1) to contain—
  - (a) provision identifying the property, rights and liabilities to be transferred (which may include property, rights and liabilities that would not otherwise be capable of being transferred);
  - (b) provision for the division of property, rights and liabilities, including—
    - (i) provision creating an interest in or right over property;
    - (ii) provision creating new rights and liabilities;
    - (iii) incidental provision as to the property, rights and liabilities of other persons;
  - (c) provision about the consideration to be provided (and about the enforcement of such provision).
- (5) Subsection (4) is not exhaustive of what a scheme may contain.

### Commencement Information

**I48** S. 45 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(iv\)](#) (with art. 5)

## 46 Operation of retail market

- (1) Exit regulations about the operation of the water industry in relation to a retail exit area may include such provision as is described in the following subsections.
- (2) Exit regulations may make provision for and in connection with requiring a relevant undertaker to impose on an eligible licensee only such charges under a section 66D agreement or a section 117E agreement as would enable the licensee to fulfil its obligations under agreements (including deemed agreements) transferred to the licensee from the undertaker under the regulations.
- (3) Exit regulations may make provision for and in connection with requiring a water supply or sewerage licensee, where the licensee is providing services under the licensee's licence in relation to a retail exit area, to provide such services under that licence in relation to that area as the regulations may specify.
- (4) Exit regulations may make provision for and in connection with such arrangements between a water supply or sewerage licensee and a relevant undertaker as would enable the licensee to comply with requirements imposed on it under subsection (3).



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- (5) Exit regulations may make provision as to the functions of a relevant undertaker in relation to a retail exit area and may, in particular, modify or disapply a duty imposed on a relevant undertaker by—
- (a) section 63AC(2) (interim duty to supply water), or
  - (b) section 110L(2) (interim duty to provide sewerage services).
- (6) Exit regulations may provide for a water supply or sewerage licensee that—
- (a) is a company,
  - (b) is providing services under its licence in relation to a retail exit area, and
  - (c) satisfies such criteria as may be specified by the regulations (which may include criteria as to market share),
- to be subject to provision for special administration (see section 23 of, and Schedule 2 to, the Water Industry Act 1991) in such circumstances as the regulations may specify.
- (7) Exit regulations may include provision—
- (a) requiring relevant undertakers, water supply licensees and sewerage licensees to provide such information as the regulations may specify to customers;
  - (b) requiring relevant undertakers, water supply licensees and sewerage licensees to provide such information as the regulations may specify to the WSRA or the Secretary of State;
  - (c) requiring the WSRA to record such information as the regulations may specify in the register it maintains under section 195 of the Water Industry Act 1991.
- (8) Provision under subsection (7)(b) may in particular specify information about customers and the arrangements under which they receive services.

#### **Commencement Information**

**I49** S. 46 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(v\)](#) (with art. 5)

#### **47 Operation of retail market: charges etc**

- (1) Exit regulations may make provision for water supply licensees and sewerage licensees, that are providing or proposing to provide services under their water supply or sewerage licences in relation to a retail exit area, to make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to such services.
- (2) Provision under subsection (1) may include—
- (a) provision for a scheme to make different provision for different purposes, or different areas;
  - (b) provision about the publication of a scheme or revised scheme;
  - (c) provision about sending a copy of a scheme or revised scheme to the WSRA;
  - (d) provision enabling the WSRA to direct that terms or conditions be modified generally or in a particular case;
  - (e) provision requiring a licensee to comply with a direction under paragraph (d), including provision for enforcing such a duty under section 18 of the Water Industry Act 1991.
- (3) Provision under subsection (1) may also include—



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- (a) provision requiring the WSRA to issue a code about providing services to which a scheme under subsection (1) relates;
  - (b) provision for the code to include, in particular, provision about—
    - (i) the terms and conditions contained in such schemes;
    - (ii) licensees informing owners or occupiers of premises about their schemes before agreeing any terms and conditions for the provision of services;
  - (c) provision for the WSRA, if it considers that a licensee is not acting as required by such provision as is described in paragraph (b), to give the licensee a direction to do, or not to do, a particular thing specified in the direction;
  - (d) provision requiring a licensee to comply with a direction under paragraph (c), including provision for enforcing such a duty under section 18 of the Water Industry Act 1991;
  - (e) provision requiring the WSRA from time to time to review the code and, if appropriate, to issue a revised code.
- (4) Exit regulations may make provision for the WSRA to issue and enforce—
- (a) rules about charges for services that may be imposed by water supply or sewerage licensees in relation to a retail exit area;
  - (b) if exit regulations make provision for licensees to make schemes about such charges, rules about such schemes.
- (5) Provision under subsection (4) may include—
- (a) provision for the rules to make different provision for different cases;
  - (b) provision for the WSRA to direct a licensee to comply with the rules;
  - (c) provision for such directions to be enforceable by the WSRA under section 18;
  - (d) provision for the Secretary of State to issue guidance as to the content of the rules;
  - (e) provision for the Secretary of State to prevent rules being issued.

#### Commencement Information

**I50** S. 47 in force at 6.4.2015 by S.I. 2015/773, art. 2(2)(b)(vi) (with art. 5)

PROSPECTIVE

#### 48 Exit applications: further provision

- (1) Exit regulations may make provision about the provision relating to exit applications that may be included in a relevant undertaker's conditions of appointment.
- (2) Exit regulations may in particular prohibit the inclusion of provision requiring a relevant undertaker to make an exit application.
- (3) Exit regulations may make provision for requiring the WSRA or the CMA to obtain the consent of the Secretary of State—
  - (a) before exercising a function so as to require a relevant undertaker to make an exit application, or

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- (b) before exercising a function in a way that is likely to result in a relevant undertaker making an exit application.

#### 49 Modification of appointment and licence conditions

- (1) Exit regulations may provide for the WSRA to modify the conditions of appointment of a relevant undertaker where it considers it necessary or expedient to do so in consequence of the transfer of part of the relevant undertaker's undertaking under the regulations.
- (2) Exit regulations may provide for the WSRA to modify the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 where it considers it necessary or expedient to do so in consequence of the transfer to the holder of that licence of part of a relevant undertaker's undertaking under the regulations.
- (3) Exit regulations may provide for the WSRA, where it modifies conditions under subsection (1) or (2), to make such incidental or consequential modifications of other conditions of the appointment or, as the case may be, other conditions of the licence as it considers necessary or expedient.
- (4) Provision made by exit regulations as regards the modification of conditions under this section may include—
  - (a) provision for the Secretary of State to give consent to a modification proposed by the WSRA;
  - (b) provision as to the period during which a modification may be made.
- (5) Provision under subsection (4)(b) may not allow a modification to be made after the end of the period of one year beginning with the day on which the transfer in question takes place.

#### Commencement Information

**I51** S. 49 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(vii\)](#) (with art. 5)

PROSPECTIVE

#### 50 General directions

- (1) Exit regulations may make provision for the Secretary of State to publish, from time to time, a statement setting out general directions for the WSRA and the CMA as regards the carrying out of their relevant functions in circumstances where the WSRA or the CMA, in carrying out those functions, might be able—
  - (a) to require or bring about an exit application, or
  - (b) to have an effect as regards the making of an exit application.
- (2) Exit regulations may require the WSRA and the CMA to carry out their relevant functions in accordance with any statement published under the regulations.
- (3) Exit regulations may make provision about formulating a statement to be published under the regulations, and may in particular—
  - (a) require the Secretary of State to have regard to—

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- (i) the duties of the WSRA mentioned in section 2(1)(b) of the Water Industry Act 1991,
  - (ii) the duties of the CMA under the Competition Act 1998 or the Enterprise Act 2002, and
  - (iii) the protection of the interests of consumers (within the meaning of section 2 of the Water Industry Act 1991), and
- (b) enable the Secretary of State to have regard to such other matters as the Secretary of State thinks fit.
- (4) Exit regulations may make provision for the Secretary of State, before publishing a statement under the regulations, to consult—
- (a) the WSRA,
  - (b) the CMA,
  - (c) the Consumer Council for Water,
  - (d) relevant undertakers,
  - (e) water supply licensees and sewerage licensees,
  - (f) the Welsh Ministers, and
  - (g) anyone else the Secretary of State thinks appropriate.
- (5) Exit regulations may—
- (a) require the Secretary of State to lay a draft of a statement before Parliament before publishing it;
  - (b) require the Secretary of State to wait for a period specified in or determined under the regulations after laying the draft statement under paragraph (a);
  - (c) prohibit the Secretary of State from publishing it if, within that period, either House of Parliament resolves not to approve it.
- (6) In this section “relevant function” means—
- (a) in relation to the WSRA, a function mentioned in section 2(1)(b) of the Water Industry Act 1991;
  - (b) in relation to the CMA, a function of the CMA under the Competition Act 1998 or the Enterprise Act 2002.

## 51 Exit regulations: general

- (1) Exit regulations may make such provision as the Secretary of State considers appropriate—
- (a) for modifying a person's duties and powers, and
  - (b) for imposing new duties and conferring new powers on a person.
- (2) The persons in relation to whom provision under subsection (1) may be made include—
- (a) the Secretary of State;
  - (b) the Chief Inspector of Drinking Water;
  - (c) the Welsh Ministers;
  - (d) the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) of the Water Industry Act 1991 applies;
  - (e) the WSRA;

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- (f) the CMA;
  - (g) the Environment Agency;
  - (h) the NRBW;
  - (i) the Consumer Council for Water;
  - (j) relevant undertakers;
  - (k) water supply licensees and sewerage licensees.
- (3) Exit regulations may—
- (a) apply enactments, with or without such modifications as the Secretary of State thinks fit;
  - (b) amend, repeal or revoke enactments.
- (4) The provision that may be made by exit regulations includes provision conferring power to make subordinate legislation.
- (5) Exit regulations may—
- (a) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking enactments) as the Secretary of State considers appropriate, and
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or areas.
- (6) In this section “enactment”—
- (a) includes an Act or Measure of the National Assembly for Wales;
  - (b) includes an enactment contained in this Act, other than this Chapter.

#### **Commencement Information**

**I52** S. 51 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(viii\)](#) (with art. 5)

## **52 Interpretation**

- (1) In this Chapter—
- “the CMA” means the Competition and Markets Authority;
  - “eligible licensee” has the meaning given by section 44;
  - “exit application” means an application under section 42(1)(a);
  - “the NRBW” means the Natural Resources Body for Wales;
  - “non-household customer” means a person who is the customer as regards a service provided in respect of non-household premises;
  - “non-household premises” means premises other than household premises as defined in section 17C of the Water Industry Act 1991;
  - “retail exit area” has the meaning given by section 42;
  - “the WSRA” means the Water Services Regulation Authority.
- (2) Except in so far as the context otherwise requires, terms used in this Chapter have the same meaning as in the Water Industry Act 1991.

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#### Commencement Information

**I53** S. 52 in force at 6.4.2015 by S.I. 2015/773, art. 2(2)(b)(ix) (with art. 5)

### 53 Procedure

- (1) Before making exit regulations, the Secretary of State is to consult—
  - (a) the Welsh Ministers;
  - (b) the WSRA;
  - (c) the CMA;
  - (d) the Consumer Council for Water;
  - (e) relevant undertakers whose areas are wholly or mainly in England;
  - (f) water supply licensees and sewerage licensees;
  - (g) persons whom the Secretary of State considers to represent the interests of investors in the water industry.
- (2) The power to make exit regulations is to be exercised by statutory instrument.
- (3) A statutory instrument containing exit regulations made by the Secretary of State may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

#### Commencement Information

**I54** S. 53(1)(a)-(e) (g) (2) (3) in force at 6.4.2015 by S.I. 2015/773, art. 2(2)(b)(x) (with art. 5)

**I55** S. 53(1)(f) in force at 6.4.2015 for specified purposes by S.I. 2015/773, art. 2(2)(b)(x) (with art. 5)

## CHAPTER 5

### MISCELLANEOUS

PROSPECTIVE

### 54 Consumer redress

- (1) The Water Services Regulation Authority may modify the conditions of—
  - (a) a pre-commencement appointment of a water or sewerage undertaker, or
  - (b) a pre-commencement water supply licence,so as to include conditions relating to the provision of a consumer redress scheme.
- (2) In subsection (1)—
  - (a) “pre-commencement appointment of a water or sewerage undertaker” means an appointment of a company under Chapter 1 of Part 2 of the Water Industry Act 1991 to be a water or sewerage undertaker which is made before the day on which this section comes into force, and
  - (b) “pre-commencement water supply licence” means a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 granted before that day.

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- (3) In this section, “consumer redress scheme” means a scheme or other arrangements for unresolved complaints to be investigated and determined by an independent person.
- (4) The conditions that may under subsection (1) be included in an appointment or licence include in particular conditions requiring the company holding the appointment or the person holding the licence—
  - (a) to secure the provision of a consumer redress scheme, or
  - (b) to secure the provision of a consumer redress scheme which is of a description specified in the conditions or which meets requirements so specified.
- (5) Where under subsection (1) the Authority modifies conditions of an appointment or licence, it may make such incidental or consequential modifications of other conditions of the appointment or, as the case may be, other conditions of the licence as it considers necessary or expedient.
- (6) The power of the Authority under subsection (1) to modify the conditions of an appointment or licence may not be exercised after the end of the period of two years beginning with the day on which this section comes into force.
- (7) Before making a modification under this section the Authority must consult—
  - (a) the company holding the appointment or the person holding the licence;
  - (b) the Secretary of State;
  - (c) the Welsh Ministers;
  - (d) the Consumer Council for Water;
  - (e) such other persons as the Authority thinks it appropriate to consult.
- (8) The Minister may direct the Authority not to make a modification that it proposes to make under this section; and the Authority must comply with such a direction.
- (9) In subsection (8) “the Minister” means—
  - (a) the Secretary of State, in relation to—
    - (i) a water or sewerage undertaker whose area is wholly or mainly in England;
    - (ii) a person who holds a licence under Chapter 1A of Part 2 of the Water Industry Act 1991;
  - (b) the Welsh Ministers, in relation to a water or sewerage undertaker whose area is wholly or mainly in Wales.

## **55 Modification of appointment and licence conditions**

- (1) The Water Services Regulation Authority may modify the conditions of appointment of a company appointed under Chapter 1 of Part 2 of the Water Industry Act 1991 to be a water or sewerage undertaker where it considers it necessary or expedient to do so in consequence of provision made by or under this Part.
- (2) The Authority may modify the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 where it considers it necessary or expedient to do so in consequence of provision made by or under this Part.
- (3) Where the Authority modifies—
  - (a) conditions of appointment under subsection (1), or
  - (b) conditions of a licence under subsection (2),

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it may make such incidental or consequential modifications of other conditions of the appointment or, as the case may be, other conditions of the licence as it considers necessary or expedient.

- (4) Before making a modification under this section, the Authority must consult—
  - (a) the company holding the appointment or, as the case may be, the person holding the licence;
  - (b) the Secretary of State;
  - (c) the Welsh Ministers;
  - (d) such other persons as the Authority thinks it appropriate to consult.
- (5) The power of the Authority to modify—
  - (a) the conditions of a company's appointment under subsection (1), or
  - (b) the conditions of a person's licence under subsection (2),may not be exercised after the end of the period of two years beginning with the day on which the provision in question comes into force.
- (6) References in subsections (1) to (5) to provision made by or under this Part are to be treated, where particular provision made by or under this Part comes into force on a particular day for a particular purpose, as references to so much of such provision as comes into force on a particular day.
- (7) References in this section to provision made by or under this Part include references to provision made under section 90 or 91 in connection with this Part.
- (8) The Minister may give directions to the Authority for the purpose of securing that—
  - (a) the conditions of appointment of a water or sewerage undertaker are modified under this section;
  - (b) the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 are modified under this section.
- (9) The Minister may direct the Authority not to make a modification that it proposes to make under this section.
- (10) The Authority must comply with a direction under subsection (8) or (9).
- (11) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to—
    - (i) a water or sewerage undertaker whose area is wholly or mainly in England;
    - (ii) a person who holds a licence under Chapter 1A of Part 2 of the Water Industry Act 1991;
  - (b) the Welsh Ministers, in relation to a water or sewerage undertaker whose area is wholly or mainly in Wales.

**Commencement Information**

**I56** S. 55 in force at 1.1.2015 by S.I. 2014/3320, art. 2(2)(c)

**56 Further amendments**

Schedule 7 (which contains further amendments) has effect.



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#### Commencement Information

- I57** S. 56 not in force at Royal Assent; s. 56 in force for specified purposes at 14.7.2014, see s. 94(2)(s)(t)
- I58** S. 56 in force at 1.1.2015 for specified purposes by S.I. 2014/3320, **art. 2(2)(d)**
- I59** S. 56 in force at 15.7.2015 for specified purposes by S.I. 2015/1469, **art. 2(e)**
- I60** S. 56 in force at 1.9.2015 for specified purposes by S.I. 2015/1469, **art. 3(c)**
- I61** S. 56 in force at 1.11.2015 for specified purposes by S.I. 2015/1469, **art. 4(b)**
- I62** S. 56 in force at 18.12.2015 for specified purposes by S.I. 2015/1938, **art. 2(f)**
- I63** S. 56 in force at 1.1.2016 for specified purposes by S.I. 2015/1938, **art. 3(c)**



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