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# Water Act 2014

## 2014 CHAPTER 21

### PART 1

#### WATER INDUSTRY

### 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—

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- (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

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

## 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

- I2** S. 23 in force at 1.1.2015 for specified purposes by S.I. 2014/3320, art. 2(1)(a) (with art. 3)  
**I3** 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—

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## **“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—
  - (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.

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## **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.
  - (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—

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“(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

I4 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).

(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”.

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#### Commencement Information

**I5** 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.
- (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.

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(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.

(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)—

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- (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).
- (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;



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- (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.
- (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”;

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- (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.
- (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**

**I6** S. 29(2)(5) in force at 1.1.2015 for specified purposes by S.I. 2014/3320, art. 2(2)(a)

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### **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
  - (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)

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- (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—

**“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**

**I7** S. 30(2)(5) in force at 1.1.2015 for specified purposes by S.I. 2014/3320, art. 2(2)(b)

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—

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- (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 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

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- (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
  - (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;

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- (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.

#### **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.

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### **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 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.”



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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
  - (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.

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

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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 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.

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

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

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

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

### 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 ”;
  - (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—

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- (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

**I8** 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.
- (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—

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- (a) a company that holds an appointment as a relevant undertaker, if of the opinion that Condition 1 is satisfied, or
- (b) a person who holds a licence under Chapter 1A of Part 2, if of the opinion that Condition 2 is satisfied.

(1A) Condition 1 is that the company—

- (a) may be contravening, or may have contravened, a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (b) may be causing or contributing to, or may have caused or contributed to, a contravention by another company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (c) may be causing or contributing to, or may have caused or contributed to, a contravention by a person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,
- (d) has not met the standards prescribed under section 38(2) in connection with the provision of supplies of water, or
- (e) has not met the standards prescribed under section 95(2) in connection with the provision of sewerage services.

(1B) Condition 2 is that the person—

- (a) may be contravening, or may have contravened, a condition of the licence or a statutory or other requirement enforceable under section 18,
- (b) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18,
- (c) may be causing or contributing to, or may have caused or contributed to, a contravention by another person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18,
- (d) has not met the standards prescribed under section 38ZA(2) in connection with the provision of water supplies, or
- (e) has not met the standards prescribed under section 95ZA(2) in connection with the provision 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—

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- (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—

**“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.



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- (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.
- (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).

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- (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;
    - (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;

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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;
  - (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.

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- (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.

#### **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.

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- (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

**I9** S. 38 in force at 1.1.2015 for specified purposes by [S.I. 2014/3320](#), **art. 2(1)(b)** (with [art. 3](#))

**I10** 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—

#### *“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—

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- (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 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—

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“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.”

### *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

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- (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;
  - (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**

**I11** S. 40(1) in force at 14.7.2014 by S.I. 2014/1823, art. 2(a)

VALID FROM 01/11/2015

#### *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)—



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- (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—
- (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.”

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