



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART I

#### PRELIMINARY

##### *The Director General of Water Services*

#### **1 The Director General of Water Services.**

- (1) There shall continue to be an officer known as the Director General of Water Services (in this Act referred to as “the Director”) for the purpose of carrying out the functions of that Director under this Act.
- (2) Appointment of any person to hold office as the Director shall be made by the Secretary of State.
- (3) An appointment of a person to hold office as the Director shall be for a term not exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.
- (4) The Director may at any time resign his office as the Director by notice addressed to the Secretary of State; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.
- (5) Subject to the preceding provisions of this section, the Director shall hold and vacate office as such in accordance with the terms of his appointment.
- (6) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

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VALID FROM 01/04/2006

### **[<sup>F1</sup>1A Water Services Regulation Authority**

- (1) There shall be a body corporate to be known as the Water Services Regulation Authority (in this Act referred to as “the Authority”) for the purpose of carrying out the functions conferred on or transferred to it by this Act or under or by virtue of any other enactment.
- (2) The functions of the Authority are performed on behalf of the Crown.
- (3) Schedule 1A to this Act shall have effect with respect to the Authority.
- (4) In Welsh the Authority may be known as “Awdurdod Rheoleiddio Gwasanaethau Dŵr”.]

#### **Textual Amendments**

- F1** [S. 1A](#) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 34(1)**, 105(3); S.I. 2005/2714, **art. 4(a)** (with [Sch. para. 8](#))

### *General duties*

## **2 General duties with respect to water industry.**

- (1) This section shall have effect for imposing duties on the Secretary of State and on the Director as to when and how they should exercise and perform the following powers and duties, that is to say—
  - (a) in the case of the Secretary of State, the powers and duties conferred or imposed on him by virtue of the provisions of this Act relating to the regulation of relevant undertakers; and
  - (b) in the case of the Director, the powers and duties conferred or imposed on him by virtue of any of those provisions, by the provisions relating to the financial conditions of requisitions or by the provisions relating to the movement of certain pipes.
- (2) The Secretary of State or, as the case may be, the Director shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner that he considers is best calculated—
  - (a) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of England and Wales; and
  - (b) without prejudice to the generality of paragraph (a) above, to secure that companies holding appointments under Chapter I of Part II of this Act as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of the functions of such undertakers.
- (3) Subject to subsection (2) above, the Secretary of State or, as the case may be, the Director shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner that he considers is best calculated—

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- (a) to ensure that the interests of every person who is a customer or potential customer of a company which has been or may be appointed under Chapter I of Part II of this Act to be a relevant undertaker are protected as respects the fixing and recovery by that company of water and drainage charges and, in particular—
    - (i) that the interests of customers and potential customers in rural areas are so protected; and
    - (ii) that no undue preference is shown, and that there is no undue discrimination, in the fixing of those charges;
  - (b) to ensure that the interests of every such person are also protected as respects the other terms on which any services are provided by that company in the course of the carrying out of the functions of a relevant undertaker and as respects the quality of those services;
  - [<sup>F2</sup>(bb) to ensure that the interests of every such person are also protected as respects any activities of that company which are not attributable to the exercise of functions of a relevant undertaker, or as respects any activities of any person appearing to the Secretary of State or (as the case may be) the Director to be connected with that company, and in particular by ensuring—
    - (i) that transactions are carried out at arm's length; and
    - (ii) that that company, in relation to the exercise of its functions as a relevant undertaker, maintains and presents accounts in a suitable form and manner;]
  - (c) to ensure that the interests of every such person are further protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (including a disposal before the Secretary of State and the Director became subject to the duties imposed by virtue of this paragraph) of any of that company's protected land or of any interest or right in or over any of that land;
  - (d) to promote economy and efficiency on the part of any such company in the carrying out of the functions of a relevant undertaker; and
  - (e) to facilitate effective competition, with respect to such matters as he considers appropriate, between persons holding or seeking appointments under that Chapter.
- (4) In performing his duty under subsection (3) above, so far as it requires him to do anything in the manner which he considers is best calculated to ensure that the interests of the customers and potential customers of any company are protected as respects the quality of any services provided by that company in the course of the carrying out of the functions of a relevant undertaker, the Secretary of State or, as the case may be, the Director shall take into account, in particular, the interests of those who are disabled or of pensionable age.
- (5) In this section the references to water and drainage charges are references to—
- (a) any charges in respect of any services provided in the course of the carrying out of the functions of a relevant undertaker; and
  - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any of its customers or potential customers to pay.
- (6) For the purposes of this section—
- (a) [<sup>F3</sup>subject to subsection (6A) below] the reference in subsection (1) above to the provisions of this Act relating to the regulation of relevant undertakers is

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a reference to the provisions contained in Part II of this Act (except section 28 and Schedule 4), or in any of sections 38, 39, 95, 96, 153, 181, 182, 193 to 195 and 201 to 203 below;

- (b) the reference in that subsection to the provisions relating to the financial conditions of requisitions is a reference to the provisions contained in sections 42, 43, 48, 99 and 100 below; and
- (c) the reference in that subsection to the provisions relating to the movement of certain pipes is a reference to the provisions of section 185 below.

[<sup>F4</sup>(6A) Subsections (2) to (4) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 31(3) below (“Competition Act functions”).

(6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (2) to (4) above, if it is a matter to which [<sup>F5</sup> the Office of Fair Trading (in this Act referred to as “the OFT”)] could have regard when exercising that function.]

#### Textual Amendments

- F2** S. 2(3)(bb) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 50](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F3** Words in s. 2(6)(a) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by [1998 c. 41, s. 54\(3\), Sch. 10 Pt. II para. 5\(3\)](#) (with s. 73); [S.I. 1998/2750, art. 2\(1\)](#); [S.I. 2000/344, art. 2 Sch. 54\(3\), Sch. 10 Pt. II para. 5\(4\)](#) (with s. 73); [S.I. 1998/2750, art. 2\(1\)](#); [S.I. 2000/344, art. 2, Sch. 25\(2\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with transitional and transitory provisions in art. 3)
- F4** S. 2(6A)(6B) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by [1998 c. 41, s. 54\(3\), Sch. 10 Pt. II para. 5\(4\)](#) (with s. 73); [S.I. 1998/2750, art. 2\(1\)](#); [S.I. 2000/344, art. 2, Sch. 25\(2\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with transitional and transitory provisions in art. 3)
- F5** Words in s. 2(6B) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 25\(2\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with transitional and transitory provisions in art. 3)

VALID FROM 01/04/2005

#### [<sup>F6</sup>2A Guidance on social and environmental matters

- (1) Guidance may be issued from time to time—
  - (a) by the Assembly, with respect to appointment areas which are wholly or mainly in Wales; and
  - (b) by the Secretary of State, with respect to other appointment areas, about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) In formulating guidance, the Secretary of State and the Assembly shall, where practicable, have regard to the costs and benefits which may be expected to result from the guidance.
- (3) The Authority shall, in exercising and performing the powers and duties mentioned in section 2(1) above (subject to section 2(6) above), have regard to any guidance issued under this section.
- (4) Before issuing guidance under this section the Secretary of State and the Assembly shall consult—
  - (a) the Authority;

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- (b) the Council;
  - (c) in the case of the Secretary of State, the Assembly and *vice versa*;
  - (d) relevant undertakers;
  - (e) licensed water suppliers; and
  - (f) such other persons as the Secretary of State or the Assembly considers it appropriate to consult in relation to the guidance.
- (5) A draft of any guidance proposed to be issued by the Secretary of State under this section shall be laid before each House of Parliament.
- (6) Guidance shall not be issued by the Secretary of State under this section until after the period of forty days beginning with—
  - (a) the day on which the draft is laid before each House 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.
- (7) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.
- (8) In reckoning any period of forty days for the purposes of subsection (6) or (7) above, no account shall be taken of any time during which—
  - (a) Parliament is dissolved or prorogued; or
  - (b) both Houses are adjourned for more than four days.
- (9) The Secretary of State and the Assembly shall arrange for any guidance issued by him or it under this section to be published in such manner as he or it considers appropriate.
- (10) In this section, an “appointment area” is an area for which an appointment is held under Chapter 1 of Part 2 of this Act.]

#### Textual Amendments

**F6** S. 2A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 40, 105(3)**; [S.I. 2005/968](#), **art. 2(g)** (with savings in [art. 4](#), [Sch. 1](#), 2)

### 3 General environmental and recreational duties.

- (1) It shall be the duty of each of the following, that is to say—
  - (a) the Secretary of State;
  - (b) <sup>F7</sup> .....
  - (c) the Director; and
  - (d) every company holding an appointment as a relevant undertaker,in formulating or considering any proposals relating to any functions of a relevant undertaker (including, in the case of such a company, any functions which, by virtue of that appointment, are functions of the company itself) to comply with the requirements imposed in relation to the proposals by subsections (2) and (3) below.
- (2) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are—
  - (a) a requirement, so far as may be consistent—

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- (i) with the purposes of any enactment relating to the functions of the undertaker; and
    - (ii) in the case of the Secretary of State and the Director, with their duties under section 2 above,

so to exercise any power conferred with respect to the proposals on the person subject to the requirement as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;
  - (b) a requirement to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and
  - (c) a requirement to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.
- (3) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are, subject to the requirements imposed by subsection (2) above—
- (a) a requirement to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;
  - (b) a requirement to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and
  - (c) a requirement to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.
- (4) Subsections (1) to (3) above shall apply so as to impose duties on the Director and any company holding an appointment as a relevant undertaker in relation to any proposal relating to—
- (a) the functions of [<sup>F8</sup>the Environment Agency]; or
  - (b) the functions of an internal drainage board,
- as they apply in relation to any proposals relating to the functions of such an undertaker; and for the purposes of this subsection the reference in subsection (2)(a) above to the functions of the undertaker shall have effect as a reference to the functions of [<sup>F9</sup>the Environment Agency] or, as the case may be, of the internal drainage board in question.
- (5) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes navigation which is subject to the control of that authority to be obstructed or otherwise interfered with, it shall be the duty of every company holding an appointment as a relevant undertaker to take such steps as are—
- (a) reasonably practicable; and
  - (b) consistent with the purposes of the enactments relating to the functions of the undertaker in question,
- for securing, so long as that company has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.
- (6) It shall be the duty of a company holding an appointment as a relevant undertaker, in determining what steps to take in performance of any duty imposed by virtue of

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subsection (5) above, to take into account the needs of persons who are chronically sick or disabled.

- (7) The obligations under this section of a company holding an appointment as a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.
- (8) Nothing in this section or the following provisions of this Act shall require recreational facilities made available by a relevant undertaker to be made available free of charge.
- (9) References in this section to the functions of a relevant undertaker shall be construed, without prejudice to section 156(7) below, as if those functions included the management, by a company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a relevant undertaker).
- (10) In this section “building” includes structure.

#### Textual Amendments

- F7** S. 3(1)(b) repealed ( 27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002; S.I. 2002/794, art. 5(2), 6, Sch. 2
- F8** Words in s. 3(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 97 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F9** Words in s. 3(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 97 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

## 4 Environmental duties with respect to sites of special interest.

- (1) Where [<sup>F10</sup>English Nature] or the Countryside Council for Wales are of the opinion that any area of land in England or, as the case may be, in Wales—
  - (a) is of special interest by reason of its flora, fauna or geological or physiographical features; and
  - (b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,that Council shall notify the fact that the land is of special interest for that reason to every relevant undertaker whose works, operations or activities may affect the land.
- (2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—
  - (a) is land in relation to which the matters for the purposes of which section 3 above has effect are of particular importance; and
  - (b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker,the National Park authority or Broads Authority shall notify the fact that the land is such land, and the reasons why those matters are of particular importance in relation to the land, to every relevant undertaker whose works, operations or activities may affect the land.
- (3) Where a relevant undertaker has received a notification under subsection (1) or (2) above with respect to any land, that undertaker shall consult the notifying body before carrying out any works, operations or activities which appear to that undertaker to be likely—

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- (a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or
  - (b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.
- (4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to [<sup>F10</sup>English Nature], the Countryside Council for Wales, the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.
- (5) The obligations under this section of a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.
- (6) In this section—
- “the Broads” has the same meaning as in the <sup>M1</sup>Norfolk and Suffolk Broads Act 1988; <sup>F11</sup> . . .
- <sup>F11</sup> . . .
- and section 3(9) above shall apply, as it applies in relation to that section, for construing (in accordance with section 6 below) any references in this section to a relevant undertaker.

#### Textual Amendments

**F10** Words in s. 4(1)(4) substituted (30.1.2001) by 2000 c. 38, ss. 73(4), 103(2), **Sch. 8 para. 1(p)(i)**

**F11** Definition of “National Park authority” and the word “and” immediately preceding it repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

#### Marginal Citations

**M1** 1988 c. 4.

## 5 Codes of practice with respect to environmental and recreational duties.

- (1) The Secretary of State may by order approve any code of practice issued (whether by him or by another person) for the purpose of—
- (a) giving practical guidance to relevant undertakers with respect to any of the matters for the purposes of which sections 3 and 4 above have effect; and
  - (b) promoting what appear to him to be desirable practices by such undertakers with respect to those matters,
- and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.
- (2) A contravention of a code of practice as for the time being approved under this section shall not of itself constitute a contravention of any requirement imposed by section 3 or 4 above or give rise to any criminal or civil liability; but the Secretary of State <sup>F12</sup> . . . shall <sup>F13</sup> . . . be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and how he should exercise his powers in relation to any relevant undertaker by virtue of this Act, any of the other consolidation Acts or the <sup>M2</sup>Water Act 1989.



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- (3) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The Secretary of State shall not make an order under this section unless he has first consulted—
- (a) [<sup>F14</sup>the Environment Agency];
  - (b) the [<sup>F15</sup>Countryside Agency], [<sup>F16</sup>EnglishNature] and the Countryside Council for Wales;
  - (c) the Historic Buildings and Monuments Commission for England;
  - (d) the Sports Council and the Sports Council for Wales; and
  - (e) such relevant undertakers and other persons as he considers it appropriate to consult.
- (5) In this section “the other consolidation Acts” means the <sup>M3</sup>Water Resources Act 1991, the <sup>M4</sup>Statutory Water Companies Act 1991, the <sup>M5</sup>Land Drainage Act 1991 and the <sup>M6</sup>Water Consolidation (Consequential Provisions) Act 1991.

#### Textual Amendments

- F12** Words in s. 5(2) repealed (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), art. 5(2), **Sch. 2** (with art. 6)
- F13** Word in s. 5(2) repealed (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), art. 5(2), **Sch. 2** (with art. 6)
- F14** Words in s. 5(4)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 98** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F15** Words in s. 5(4)(b) substituted (20.2.1999) by S.I. 1999/416, art. 3, **Sch. 1 para. 15(2)**
- F16** Words in s. 5(4)(b) substituted (30.1.2001) by 2000 c. 38, ss. 73(4), 103(2), **Sch. 8 para. 1(p)(ii)**

#### Marginal Citations

- M2** 1989 c. 15.
- M3** 1991 c. 57.
- M4** 1991 c. 58.
- M5** 1991 c. 59.
- M6** 1991 c. 60.

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