



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART II

#### APPOINTMENT AND REGULATION OF UNDERTAKERS

#### CHAPTER I

#### APPOINTMENTS

#### *Making of appointments*

#### **6 Appointment of relevant undertakers.**

- (1) Subject to the following provisions of this Chapter, a company may be appointed—
  - (a) by the Secretary of State; or
  - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director,to be the water undertaker or sewerage undertaker for any area of England and Wales.
- (2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect, while the appointment remains in force—
  - (a) of requiring the company to perform any duty imposed by or under any enactment on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
  - (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any enactment on an undertaker of that description;
  - (c) of requiring enactments and subordinate legislation authorising or requiring anything to be done in relation to an undertaker of the relevant description to

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- be construed as authorising or requiring that thing to be done in relation to that company; and
- (d) of requiring other references in any enactment or subordinate legislation to an undertaker of the relevant description, or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.
- (3) The appointment of a company to be a relevant undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made.
- (4) A single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.
- (5) A company shall not be appointed to be a water undertaker <sup>F1</sup>or a sewerage undertaker] unless it is a limited company <sup>F2</sup>...
- <sup>F3</sup>(5A) A company shall not be appointed to be a relevant undertaker if it is <sup>F4</sup>a water supply licensee or sewerage licensee.]
- (6) As soon as practicable after making an appointment under this Chapter, the Secretary of State shall send a copy of the appointment to the Director.

#### Textual Amendments

- F1** Words in s. 6(5) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(b)(i)**
- F2** Words in s. 6(5) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(b)(ii)**
- F3** S. 6(5A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 3**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F4** Words in s. 6(5A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 6**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(d)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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

- C1** S. 6 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 2** (with reg. 1(1)(c))

## 7 Continuity of appointments, replacement appointments etc.

- (1) It shall be the duty of the Secretary of State to secure that such appointments are made under this Chapter as will ensure that for every area of England and Wales there is at all times both—
- (a) a company holding an appointment under this Chapter as water undertaker; and
- (b) whether or not the same company in relation to the whole or any part of that area, a company holding an appointment as sewerage undertaker.
- (2) Subject to the following provisions of this section—

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- (a) the Secretary of State; and
  - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, the Director,
- shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.
- (3) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as a relevant undertaker as secure either-
- (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
  - (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.
- (4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—
- (a) that company consents to the appointment or variation;
  - (b) the appointment or variation relates only to parts of that area none of the premises in which is served by that <sup>F5</sup>company;
  - (bb) the appointment or variation relates only to parts of that area and the conditions mentioned in subsection (5) below are satisfied in relation to each of the premises in those parts which are served by that company; or]
  - (c) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of that company's appointment.
- <sup>F6</sup>[(5) The conditions are that—
- [ the premises are, or are likely to be, supplied with not less than the following
  - <sup>F7</sup>(a) quantity of water in any period of twelve months:
    - (i) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;
    - (ii) in all other cases, [<sup>F8</sup>50 megalitres] ; and]]
    - (b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.
- (6) The Secretary of State may, after consulting the Director, make regulations amending subsection (5)(a) above by substituting, for the quantity of water for the time being specified there, such smaller quantity as he considers appropriate.

#### Textual Amendments

- F5** Words and para. (bb) in s. 7(4) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 40\(1\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F6** S. 7(5)(6) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 40\(2\)](#): Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt. I
- F7** S. 7(5)(a) substituted (17.8.2000) by [S.I. 2000/1842, art. 2\(2\)](#)

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**F8** Words in s. 7(5)(a)(ii) substituted (1.4.2005) by [The Water and Sewerage Undertakers \(Inset Appointments\) Regulations 2005 \(S.I. 2005/268\)](#), [reg. 2\(2\)](#)

## 8 Procedure with respect to appointments and variations.

- (1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.
- (2) Within fourteen days after making an application under this section, the applicant shall—
  - (a) serve notice of the application [<sup>F9</sup>on—
    - (i) the existing appointee,
    - (ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
    - (iv) the appropriate agency, and
    - (v) every] local authority whose area includes the whole or any part of the area to which the application relates; and
  - (b) publish a copy of the notice in such manner as may be prescribed.
- (3) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall give notice—
  - (a) stating that he proposes to make the appointment or variation;
  - (b) stating the reasons why he proposes to make the appointment or variation; and
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made.
- (4) A notice under subsection (3) above shall be given—
  - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
  - (b) by serving a copy of the notice [<sup>F10</sup>on—
    - (i) the existing appointee,
    - (ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
    - (iv) the appropriate agency, and
    - (v) every] local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.

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- (5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall—
- (a) serve a copy of the appointment or variation on the existing appointee; and
  - (b) serve notice of the making of the appointment or variation [<sup>F11</sup>on—
    - (i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
    - (iii) the appropriate agency, and
    - (iv) every] local authority whose area includes the whole or any part of the area to which the appointment or variation relates,and as soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Secretary of State shall send a copy of the variation to the Director.

- (6) In this section “the existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

- [<sup>F12</sup>(6A) In this section “the appropriate agency”, in relation to the replacement of a relevant undertaker, means—
- (a) the Environment Agency, if the undertaker's area is wholly in England;
  - (b) the NRBW, if the undertaker's area is wholly in Wales;
  - (c) both the Environment Agency and the NRBW, if the undertaker's area is partly in England and partly in Wales.]

- <sup>F13</sup>[(7) The Secretary of State may by regulations impose such additional procedural requirements as he considers appropriate for any case where the conditions mentioned in section 7(5) above are required to be satisfied in relation to an application for an appointment or variation replacing a company as a relevant undertaker.]

#### Textual Amendments

- F9** Words in s. 8(2)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 13\(2\)](#), 94(2)(b)
- F10** Words in s. 8(4)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 13\(3\)](#), 94(2)(b)
- F11** Words in s. 8(5)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 13\(4\)](#), 94(2)(b)
- F12** [S. 8\(6A\)](#) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), [ss. 13\(5\)](#), 94(2)(b)
- F13** [S. 8\(7\)](#) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s. 40\(3\)](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

## 9 Duties affecting making of appointments and variations.

- (1) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall consider any representations or objections which have been duly made in pursuance of the notice under section 8(3) above and have not been withdrawn.

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- (2) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State shall consult the Director.
- (3) In determining whether to make an appointment or variation by virtue of section 7(4)(b) above in relation to any part of an area, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by that appointee.
- (4) It shall be the duty of the Secretary of State or, as the case may be, of the Director—
- (a) in making an appointment or variation replacing a company as a relevant undertaker; and
  - (b) where he makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of any water or drainage charges,
- to ensure, so far as may be consistent with his duties under Part I of this Act, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.
- (5) In this section—
- “existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;
- “new appointee”, in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;
- “water or drainage charges” means
- (a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; or
  - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay.

## **10 Transitional provision with respect to replacement appointments.**

[(1)] Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

<sup>F14</sup>[(2) Subsections (3) [<sup>F15</sup>to (4)] below apply where, by such an appointment or variation, one company (“the new undertaker”) is to replace another company as a relevant undertaker, but the appointment or variation has not come into force.

- (3) The following provisions of this Act shall (except where they are inapplicable to the kind of undertaker in question) apply in relation to the new undertaker as if the appointment or variation had come into force—
- (a) sections 18 to 24 and Schedule 3;
  - (b) sections 32 to 35;
  - (c) section 155 and Schedule 9;
  - (d) sections 156, 158 to 161 and 163 to 167 and Schedule 11;
  - (e) sections 168 to 171, 173, 174, 178 to 180 and Schedule 12;

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- (f) sections 181 to 183 and Schedule 13;
- (g) sections 184 to 188 and Schedule 14;
- (h) sections 189 to 192, 197 to 200, 202, 203, 206, 208, 209, 211, 212 and 217.

[ To the extent that charging rules issued under section 144ZA relate to charges imposed <sup>F16</sup>(3A) or security required by a relevant undertaker under section 185, those rules are to apply in relation to the new undertaker as if the appointment or variation had come into force.]

- (4) Such of the conditions imposed on the new undertaker under section 11 below as the Director may specify in a written notice given by him to the undertaker shall have effect, in relation to the operation of any provision mentioned in subsection (3) above before the appointment or variation comes into force, as if the appointment or variation had come into force.
- (5) The Secretary of State may by regulations amend subsection (3) above by adding to, removing or modifying references to provisions of this Act.]

#### Textual Amendments

- F14** S. 10(2)-(5) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 42](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt.I
- F15** Words in s. 10(2) substituted (1.11.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 7\(2\)](#); S.I. 2016/1007, art. 2(h)(iii)
- F16** S. 10(3A) inserted (1.11.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 7\(3\)](#); S.I. 2016/1007, art. 2(h)(iii)

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

- C2** S. 10 renumbered as subsection (1) of s. 10 (1.7.1992 ) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.42](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt. I
- C3** [S. 10\(3A\)](#) transitional provisions for effects of 2014 c. 21, Sch. 7 para. 7 (22.3.2017) by [The Water Act 2014 \(Commencement No. 9 and Transitional Provisions\) Order 2017 \(S.I. 2017/462\), art. 14](#)

### *Conditions of appointments*

## 11 Power to impose conditions.

- (1) An appointment under this Chapter may include—
  - (a) such conditions as appear to the Secretary of State or, as the case may be, the Director to be requisite or expedient having regard to the duties imposed on him by Part I of this Act;
  - (b) conditions for the purposes of section 7(4)(c) above; and
  - (c) conditions requiring the rendering to the Secretary of State of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.
- (2) Conditions may be included by virtue of subsection (1)(a) above in an appointment under this Chapter whether or not they are connected with the supply of water, the provision of sewerage services or the exercise or performance of any power or duty

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conferred or imposed by or under any enactment on water undertakers or sewerage undertakers.

- (3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.
- (4) Any provision included by virtue of subsection (3) above in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.
- (5) For the purposes of this Act where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this section shall have effect, irrespective of their subject-matter, as conditions of both appointments.
- (6) Where an instrument of appointment has been served under subsection (3) of section 6 above on any company, the coming into force of the appointment for the purposes specified in subsection (2) of that section shall not be affected by any contravention of the requirements of this Act with respect to the provision contained by way of conditions of appointment in that instrument.
- (7) If the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in subsection (6) above, he may by order made by statutory instrument direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.
- (8) Any sums received by the Secretary of State in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

## **12 Determinations under conditions of appointment.**

- (1) Without prejudice to the generality of paragraph (a) of section 11(1) above, conditions included in an appointment by virtue of that paragraph may—
  - (a) require the appointed company to comply with any direction given by the Director as to such matters as are specified in the appointment or are of a description so specified; and
  - (b) require the appointed company, except in so far as the Director consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment or are of a description so specified.
- (2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—
  - (a) the Secretary of State or the Director; or
  - (b) on a reference by the Director, the <sup>F17</sup>CMA ,
 of such questions arising under the appointment and of such other matters, including (in the case of references to <sup>F18</sup>the CMA ) disputes as to determinations by the Director, as are specified in the appointment or are of a description so specified.



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- (3) Where any question or other matter falls to be determined by the [F19CMA] in pursuance of a provision contained in an appointment under this Chapter—
- (a) it shall be the duty of the Director, on being required to do so by the company holding that appointment, to refer that question or matter to [F20the CMA] ; and
  - (b) it shall be the duty of [F20the CMA] to determine any question or other matter referred by virtue of paragraph (a) above in accordance with—
    - (i) F21 .....
    - (ii) the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.

[F22(3A) For the purposes of subsection (3) above, where—

- (a) the question or matter referred to the [F23CMA] concerns the review of a price control imposed on the company holding the appointment; and
- (b) the [F23CMA] is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the company in connection with the reference,

the [F23CMA] shall also have regard to the extent to which, in its view, its determination is likely to support the company's (rather than the Authority's) claims in relation to the question or matter referred to it.

(3B) Subsections (4) and (5) of section 14, and [F24sections 14A and 14B], below apply to references to the [F25CMA] under this section as they apply to references under section 14.

(3C) A report of the [F25CMA] on a reference under this section—

- (a) shall be made to the Authority; and
- (b) shall include definite conclusions on the questions or other matters comprised in the reference, together with such an account of their reasons for those conclusions as, in the opinion of the [F25CMA] , is expedient for facilitating a proper understanding of those questions or other matters and of their conclusions,

and subsections (5) and (6) of section 15 below apply to such a report as they apply to a report on a reference under section 14.]

[F26(3D) The functions of the CMA with respect to a reference under this section 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 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by subsection (3B) read with section [F2714B]).]

- (4) F28 .....
- (5) F28 .....

#### Textual Amendments

**F17** Words in s. 12(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 53(2)(a); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F18** Word in s. 12(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 53(2)(b); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F19** Word in s. 12(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F20** Words in s. 12(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F21** S. 12(3)(b)(i) repealed (1.10.2004) by Water Act 2003 (c. 37), ss. 54(3), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/2528, **art. 2(h)(u)** (with art. 4, Sch.)
- F22** S. 12(3A)-(3C) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 54(2)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.)
- F23** Word in s. 12(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F24** Words in s. 12(3B) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(s), **Sch. 7 para. 8(a)**
- F25** Words in s. 12(3B)(3C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F26** S. 12(3D) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 53(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F27** Word in s. 12(3D) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(s), **Sch. 7 para. 8(b)**
- F28** S. 12(4)(5) repealed (1.10.2004) by Water Act 2003 (c. 37), ss. 54(3), 105(3), **Sch. 9 Pt. 2**; S.I. 2004/2528, **art. 2(h)(u)** (with art. 4, Sch.)

*[<sup>F29</sup>Modification of appointment conditions: England*

**Textual Amendments**

- F29** **Ss. 12A-12I** and cross-heading inserted (24.1.2022) by Environment Act 2021 (c. 30), **ss. 86(2)**, 147(3) (with s. 144); S.I. 2022/48, **reg. 2(m)**

**12A Modification by the Authority**

- (1) This section and sections **12B** to **12I** apply in relation to a company appointed under this Chapter whose area is wholly or mainly in England.
- (2) The Authority may make modifications of the conditions of the company's appointment under this Chapter.
- (3) Before making any modifications under this section, the Authority must give notice—
  - (a) stating that it proposes to make modifications,
  - (b) setting out the proposed modifications and their effect,
  - (c) stating the reasons why it proposes to make the modifications, and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (4) That time must not be less than 42 days from the date of publication of the notice.
- (5) A notice under subsection (3) must be given—
  - (a) by publishing the notice in a way the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the modifications, and
  - (b) by sending a copy of it to—
    - (i) each company holding an appointment under this Chapter the conditions of which the Authority proposes to modify,

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- (ii) any other company holding an appointment under this Chapter, any water supply licensee and any sewerage licensee, whose interests the Authority considers are likely to be materially affected by the modifications,
  - (iii) the Secretary of State,
  - (iv) any person whose functions are or include representing those within sub-paragraph (i) or (ii) in respect of interests of theirs that the Authority considers are likely to be materially affected by the modifications, and
  - (v) the Consumer Council for Water.
- (6) The Authority must consider any representations which are duly made.
- (7) If, within the time specified under subsection (3)(d), the Secretary of State directs the Authority not to make a modification, the Authority must comply with the direction.
- (8) Subsections (9) to (11) apply where, having complied with subsections (3) to (6), the Authority decides to proceed with making modifications.
- (9) The Authority must—
- (a) publish the decision and the modifications in a way the Authority considers appropriate for bringing them to the attention of persons likely to be affected by the modifications,
  - (b) state the effect of the modifications,
  - (c) state how it has taken account of any representations duly made, and
  - (d) state the reason for any differences between the modifications and those set out in the notice under subsection (3).
- (10) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 2ZA).
- (11) The date specified may not be less than 56 days from publication of the decision to make the modification (except as provided in section 12B).

## **12B Modification of conditions of appointment: early effective date**

- (1) The date specified by virtue of section 12A(10) in relation to a modification under that section may be less than 56 days from the publication of the decision to make the modification if—
- (a) the Authority considers it necessary or expedient for the modification to have effect before the 56 days expire, and
  - (b) the consultation condition is satisfied.
- (2) The consultation condition is that the notice under section 12A relating to the modification—
- (a) stated the date from which the Authority proposed that the modification should have effect,
  - (b) stated the Authority's reasons for proposing that the modification should have effect from a date less than 56 days from the decision to modify, and
  - (c) explained why, in the Authority's view, that would not have a material adverse effect on any person holding an appointment under this Chapter.

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## **12C Modifications of conditions under section 12A: supplementary**

- (1) This section applies where under section 12A the Authority modifies the conditions of any appointment under this Chapter.
- (2) The Authority may make such incidental or consequential modifications of the conditions of any appointments as it considers necessary or expedient.
- (3) The modification of a condition of an appointment has effect subject to the giving of a direction under paragraph 2 of Schedule 2ZA in relation to the decision to which the modification relates.

## **12D Appeal to the CMA**

- (1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification under section 12A of a condition of an appointment under this Chapter.
- (2) An appeal may be brought under this section only by—
  - (a) a company holding an appointment under this Chapter the conditions of which the Authority has decided to modify,
  - (b) any other company holding an appointment under this Chapter, any water supply licensee or any sewerage licensee, whose interests are materially affected by the decision,
  - (c) a person whose functions are or include representing those within paragraph (a) or (b) in respect of interests of theirs which are materially affected by the decision, or
  - (d) the Consumer Council for Water.
- (3) The permission of the CMA is required for the bringing of an appeal under this section.
- (4) The CMA may refuse permission only on one of the following grounds—
  - (a) in relation to an appeal brought by a company, water supply licensee or sewerage licensee within subsection (2)(b), that the interests of the company or licensee are not materially affected by the decision;
  - (b) in relation to an appeal brought by a person within subsection (2)(c), that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to any appeal, that the appeal is brought for reasons that are trivial or vexatious, or has no reasonable prospect of success.

## **12E Procedure on appeal to CMA**

- (1) Schedule 2ZA makes provision about the procedure for appeals under section 12D.
- (2) Except where specified otherwise in that Schedule, the functions of the CMA with respect to an appeal under section 12D are to be carried out by a group constituted for that purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

## **12F Determination by CMA of appeal**

- (1) This section applies to an appeal brought under section 12D.
- (2) In determining an appeal, the CMA must have regard, to the same extent as is required of the Authority, to—

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- (a) the Authority’s duties under section 2, and
  - (b) the Authority’s strategic priorities and objectives as set out in a statement under section 2A.
- (3) In determining the appeal the CMA—
- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal, 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 reaching its decision had it had the opportunity of doing so.
- (4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2),
  - (b) that the Authority failed to give appropriate weight to any matter mentioned in subsection (2),
  - (c) that the decision was based, wholly or partly, on an error of fact,
  - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 12A(9)(b),
  - (e) that the Authority did not follow the procedure required by sections 12A to 12C, or
  - (f) that the decision was otherwise wrong in law.
- (5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

## **12G CMA’s powers on allowing an appeal**

- (1) Where the CMA allows an appeal under section 12D to any extent, it must do one or both of the following—
- (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA.
- (2) A direction under subsection (1) must not require the Authority to do anything that it would not have power to do (apart from the direction).
- (3) The Authority must comply with a direction given to it under that subsection.

## **12H Time limits for CMA to determine an appeal**

- (1) The CMA must determine an appeal within the period of 4 months beginning with the permission date, unless subsection (2) applies.
- (2) This subsection applies where—
- (a) the CMA has received representations on the timing of the determination from a party to the appeal, and
  - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1).

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- (3) Where subsection (2) applies, the CMA must determine an appeal within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (4) Where subsection (2) applies, the CMA must also—
  - (a) inform the parties to the appeal of the time limit for determining the appeal, and
  - (b) publish that time limit in a way it considers appropriate to bring it to the attention of any other persons likely to be affected by the determination.
- (5) References in this section to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with section 12D(3).
- (6) In this section and in section 12I any reference to a party to an appeal is to be read in accordance with Schedule 2ZA.

## **12I Determination of appeal by CMA: supplementary**

- (1) A determination by the CMA on an appeal—
  - (a) must be contained in an order made by the CMA;
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
  - (d) must be notified by the CMA to the parties to the appeal;
  - (e) must be published by the CMA—
    - (i) as soon as reasonably practicable after the determination is made;
    - (ii) in a way the CMA considers appropriate to bring it to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The CMA may exclude from publication any information it is satisfied is—
  - (a) commercial information, the disclosure of which would, or in the CMA's opinion might, significantly harm the legitimate business interests of an undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual, the disclosure of which would, or in the CMA's opinion might, significantly harm the individual's interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA under subsection (1)(a).
- (4) The steps must be taken—
  - (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
  - (b) in any other case, within a reasonable time.
- (5) Section 12C applies where a condition of a licence is modified in accordance with section 12G as it applies where a condition of a licence is modified under section 12A.]

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*[<sup>F30</sup>Modification of appointment conditions: Wales]*

**Textual Amendments**

**F30** S. 13 cross-heading substituted (24.1.2022) by Environment Act 2021 (c. 30), ss. 86(3), 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

**13 Modification by agreement.**

[<sup>F31</sup>(A1) This section and sections 14 to 16B apply in relation to a company appointed under this Chapter whose area is wholly or mainly in Wales.]

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.
- (2) Before making modifications under this section, the Director shall give notice—
  - (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications; and
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
  - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the company and on the Secretary of State.
- (4) The Director shall not under this section make any modifications which the Secretary of State has, within the time specified in the notice under subsection (2) above, directed the Director not to make.
- (5) The Secretary of State shall not give a direction under subsection (4) above in relation to any modification unless—
  - (a) the modification is a modification of provision contained in the appointment for the purposes of section 7(4)(c) above;
  - (b) the modification is a modification of a provision of the appointment which relates to the disposal of, or of interests or rights in or over, a company's protected land and is stated in the appointment to be a provision which cannot be modified; or
  - (c) it appears to the Secretary of State that the modification should be made, if at all, under section 16 below.

**Textual Amendments**

**F31** S. 13(A1) inserted (24.1.2022) by Environment Act 2021 (c. 30), ss. 86(4), 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

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#### 14 Modification references to [F32CMA].

- (1) The Director may make to the [F33CMA] a reference which is so framed as to require [F34the CMA] to investigate and report on the questions—
  - (a) whether any matters which—
    - (i) relate to the carrying out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; and
    - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the company's appointment.
- (2) The Director may, at any time, by notice given to the [F35CMA] vary a reference under this section by—
  - (a) adding to the matters specified in the reference; or
  - (b) excluding from the reference some or all of the matters so specified;
 and on receipt of any such notice [F36the CMA] shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [F37CMA] in carrying out the investigation on the reference—
  - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in his opinion, those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director shall—
  - (a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and
  - (b) publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) It shall be the duty of the Director, for the purpose of assisting the [F38CMA] in carrying out an investigation on a reference under this section [F39or in carrying out functions under section 16A below], to give to [F40the CMA] —
  - (a) any information in his possession which relates to matters falling within the scope of the investigation [F41or the carrying out of those functions], and which is either—
    - (i) requested by [F40the CMA] for that purpose; or
    - (ii) information which, in his opinion, it would be appropriate for that purpose to give to [F40the CMA] without any such request;
 and
  - (b) any other assistance which [F40the CMA] may require, and which it is within his power to give, in relation to any such matters;



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and [<sup>F40</sup>the CMA], for the purpose of carrying out any such investigation [<sup>F42</sup>or such functions], shall take account of any information given to them for that purpose under this subsection.

(6) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the [<sup>F43</sup>CMA] shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by Part I of this Act.

[<sup>F44</sup>(6A) The functions of the CMA with respect to a reference under this section 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 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 14B and 16B).]

(7) <sup>F45</sup> .....

(7A) <sup>F45</sup> .....

(8) <sup>F46</sup> .....

(8A) <sup>F46</sup> .....

#### Textual Amendments

- F32** Word in s. 14 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(8\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F33** Word in s. 14(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F34** Words in s. 14(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F35** Word in s. 14(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F36** Words in s. 14(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F37** Word in s. 14(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F38** Word in s. 14(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(5\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F39** Words in s. 14(5) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 55\(2\)\(a\)](#), 105(3); S.I. 2004/2528, [art. 2\(h\)](#) (with savings in [art. 4](#), Sch.)
- F40** Words in s. 14(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(5\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F41** Words in s. 14(5) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 55\(2\)\(b\)](#), 105(3); S.I. 2004/2528, [art. 2\(h\)](#) (with savings in [art. 4](#), Sch.)
- F42** Words in s. 14(5) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 55\(2\)\(c\)](#), 105(3); S.I. 2004/2528, [art. 2\(h\)](#) (with savings in [art. 4](#), Sch.)
- F43** Word in s. 14(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(6\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F44** S. 14(6A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 54\(7\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F45** S. 14(7)(7A) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278](#), 279, [Sch. 25 para. 25\(4\)](#), [Sch. 26](#); S.I. 2003/1397, [art. 2\(1\)](#), [Sch.](#) (with savings in [art. 8](#))

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**F46** S. 14(8)(8A) repealed (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 53(3)(4), 101(2), 105(3), [Sch. 9 Pt. 2](#); S.I. 2004/641, [art. 3\(k\)\(z\)\(i\)](#) (with art. 6, Sch. 3)

#### **[<sup>F47</sup>14A References under section 14: time limits**

- (1) Every reference under section 14 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the [<sup>F48</sup>CMA] on a reference under section 14 above shall not have effect (and no action shall be taken in relation to it under section 16 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.
- (3) The Director may, if he has received representations on the subject from the [<sup>F48</sup>CMA] and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
  - (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by him under paragraph (a) above to the company whose appointment is mentioned in the reference.

#### **Textual Amendments**

- F47** Ss. 14A, 14B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 25\(5\)](#); S.I. 2003/1397, [art. 2\(1\)](#), Sch.
- F48** Words in s. 14A(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 55](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### **14B References under section 14: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [<sup>F49</sup>(1A),] (2) and (3) below, for the purposes of references under section 14 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).

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[ Section 109 shall, in its application by virtue of subsection (1) above, have effect as <sup>F50</sup>(1A) if—

(a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 14 of the Water Industry Act 1991.”,  
and

(b) subsection (8A) were omitted.]

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; <sup>F51</sup>...

[ after subsection (3), there were inserted—  
<sup>F52</sup>(aa)

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

(b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

[<sup>F53</sup>(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

“(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.”.]

(4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

(5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

#### Textual Amendments

**F47** Ss. 14A, 14B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 25(5)**; [S.I. 2003/1397](#), **art. 2(1)**, Sch.

**F49** Word in s. 14B(1) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(2)** (with art. 3, Sch. 2 para. 2)

**F50** S. 14B(1A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(3)** (with art. 3, Sch. 2 para. 2)

**F51** Word in s. 14B(2)(a) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(4)(a)** (with art. 3, Sch. 2 para. 2)

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- F52** S. 14B(2)(aa) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(4)(b)** (with art. 3, Sch. 2 para. 2)
- F53** S. 14B(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 75(5)** (with art. 3, Sch. 2 para. 2)

## 15 Reports on modification references.

- (1) In making a report on a reference under section 14 above, the [F54CMA] —
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating a proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.

[F55(1A) For the purposes of section 16 below, a conclusion contained in a report of the [F56CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [F57] by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference].

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 14 above as the conclusions of the [F58CMA], the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

[F59(2) .....

[F60(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [F61CMA] on a reference under section 14 above.

(3A) In making any report on a reference under section 14 above the [F61CMA] must have regard to the following considerations before disclosing any information.

(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [F61CMA] thinks is contrary to the public interest.

(3C) The second consideration is the need to exclude from disclosure (so far as practicable)

- (a) commercial information whose disclosure the [F61CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the [F61CMA] thinks might significantly harm the individual's interests.

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- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.]
- (4) A report of the [<sup>F62</sup>CMA] on a reference under section 14 above shall be made to the Director.
- (5) Subject to subsection (6) below, the Director—
- (a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter the report relates and to the Secretary of State; and
  - (b) shall, not less than fourteen days after that copy is received by the Secretary of State, publish another copy of that report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of fourteen days mentioned in paragraph (b) of subsection (5) above, direct the Director to exclude that matter from every copy of the report to be published by virtue of that paragraph; and the Director shall comply with any such direction.

#### Textual Amendments

- F54** Word in s. 15(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F55** S. 15(1A)(1B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(6)(a)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F56** Word in s. 15(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F57** Word in s. 15(1A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F58** Word in s. 15(1B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F59** S. 15(2) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), Sch. 10 Pt. IV para. 13(4), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, **art. 2 Sch.**
- F60** S. 15(3)-(3D) substituted (20.6.2003) for s. 15(3) by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(6)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch.
- F61** Word in s. 15(3)-(3C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F62** Word in s. 15(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 56(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 16 Modification following report.

- (1) Where a report of the [<sup>F63</sup>CMA] on a reference under section 14 above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
  - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;

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- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter; and
  - (d) specifies modifications by which those effects could be remedied or prevented,
- the Director shall, subject to the following provisions of this section, make such modifications of the conditions of that appointment as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
- (a) stating that he proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why he proposes to make the modifications; and
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on the company whose appointment it is proposed to modify.
- [<sup>F64</sup>(4A) After considering any representations or objections made in response to proposals set out in a notice under subsection (3) above, the Authority shall give notice to the [<sup>F65</sup>CMA] —
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
  - (b) stating the reasons for making the modifications.
- (4B) The Authority shall include with the notice under subsection (4A) above a copy of any representations or objections received in relation to the notice under subsection (3) above.
- (4C) If the period of four weeks from the date on which the notice under subsection (4A) above is given elapses without a direction under section 16A(1)(a) below having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
  - (b) if a direction under section 16A(1)(b) below has been given, make the modifications which are not specified in the direction.]
- (5) The Director shall not under this section make any modification of any provisions of a company's appointment under this Chapter which—
- (a) are contained in that appointment for the purposes of section 7(4)(c) above; or

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- (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

#### Textual Amendments

- F63** Words in s. 16(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 57; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F64** S. 16(4A)-(4C) inserted (1.10.2004) by Water Act 2003 (c. 37), ss. 55(3), 105(3); S.I. 2004/2528, art. 2(h) (with savings in art. 4)
- F65** Words in s. 16(4A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 57; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F66</sup>16A [<sup>F67</sup>CMA's] power of veto following report

- (1) [<sup>F68</sup>The CMA] may, within the period of four weeks after the date on which it is given a notice under section 16(4A) above, direct the Authority—
  - (a) not to make the modifications set out in that notice; or
  - (b) not to make such of the modifications as may be specified in the direction; and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the [<sup>F69</sup>CMA] is given a notice under section 16(4A) above and on the application of the [<sup>F69</sup>CMA], direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 16(4C) above) shall be extended by fourteen days.
- (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 16(4A)(a) above as appear to the [<sup>F69</sup>CMA] not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the [<sup>F69</sup>CMA] gives a direction under subsection (1) above, it—
  - (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
  - (b) shall itself make such modifications as appear to it to be requisite for the purpose of remedying or preventing—
    - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
    - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 16(4C)(b) above.
- (5) In exercising its power under subsection (4)(b) above, the [<sup>F69</sup>CMA] shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a company's appointment.
- (6) Before making modifications under subsection (4)(b) above the [<sup>F69</sup>CMA] shall give notice—
  - (a) stating that it proposes to make the modifications and setting them out;

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- (b) stating the reason why it proposes to make them;
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) above shall be given—
- (a) by publishing the notice in such manner as the [<sup>F69</sup>CMA] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy on the Authority and the company whose conditions of appointment it is proposed should be modified.
- (8) The [<sup>F69</sup>CMA] may not make any modification under this section which the Authority could not make under section 16 above.
- (9) After making modifications under this section the [<sup>F69</sup>CMA] shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

<sup>F70</sup>(10) .....

#### Textual Amendments

- F66** Ss. 16A, 16B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with **art. 4, Sch.**)
- F67** Word in s. 16A heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F68** Words in s. 16A(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F69** Words in s. 16A(2)-(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F70** S. 16A(10) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 58(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### **16B** [<sup>F71</sup>CMA's] power of veto following report: supplementary

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (9) of section 16A above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 16A above, or publishing any notice under subsection (9) of that section, the [<sup>F72</sup>CMA] must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [<sup>F72</sup>CMA] thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable)
  - (a) commercial information whose disclosure the [<sup>F72</sup>CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or



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- (b) information relating to the private affairs of an individual whose disclosure the [F72CMA] thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [F73(6A),] (7) and (8) below, for the purposes of any investigation by the [F74CMA] for the purposes of the exercise of its functions under section 16A above, as they apply for the purposes of any investigations on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).

[ Section 109 shall, in its application by virtue of subsection (6) above, have effect as F75(6A) if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 16A of the Water Industry Act 1991.”, and

- (b) subsection (8A) were omitted.]

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

- (a) subsection (2) were omitted;

[F76(b) after subsection (3), there were inserted—

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA of a notice under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the CMA under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

- (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of subsection (6) above, have effect as if for sub-paragraph (ii) there were substituted—

- (ii) if earlier, the day on which a notice is published by the [F77CMA] under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the [F77CMA] under section 16A(1) of that Act in connection with the reference concerned and

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within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.

- (9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.
- (10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

#### Textual Amendments

- F66** Ss. 16A, 16B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.)
- F71** Word in s. 16B heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 59(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F72** Word in ss. 16B(2)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F73** Word in s. 16B(6) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 76(2)** (with art. 3, Sch. 2 para. 2)
- F74** Word in s. 16B(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F75** S. 16B(6A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 76(3)** (with art. 3, Sch. 2 para. 2)
- F76** S. 16B(7)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 76(4)** (with art. 3, Sch. 2 para. 2)
- F77** Word in s. 16B(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

*[<sup>F78</sup>Modification of appointment conditions: England and Wales]*

#### Textual Amendments

- F78** S. 17 cross-heading inserted (24.1.2022) by [Environment Act 2021 \(c. 30\)](#), **ss. 86(5)**, 147(3) (with s. 144); S.I. 2022/48, reg. 2(m)

## 17 Modification by order under other enactments.

[<sup>F79</sup>(1) Where the [<sup>F80</sup>CMA] or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may, subject to subsection (3), also provide for the modification of the conditions of a company’s appointment under this Chapter to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

- (2) In subsection (1) above “relevant order” means—

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- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the 2002 Act where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by a relevant undertaker; or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by a relevant undertaker; or
  - (b) an order under section 160 or 161 of the 2002 Act where the feature, or combination of features, of the market [<sup>F81</sup>or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition is—
    - (i) the structure or an aspect of the structure of a market for the supply of goods or services by a relevant undertaker; or
    - (ii) the conduct of a relevant undertaker or of customers of a relevant undertaker.]
- (3) No modification shall be made by virtue of this section of any provisions of a company's appointment under this Chapter which—
- (a) are contained in that appointment for the purposes of section 7(4)(c) above; or
  - (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.
- [<sup>F82</sup>(4) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the 2002 Act have the same meanings in that subsection as in that Part.]

#### Textual Amendments

- F79** S. 17(1)(2) substituted (20.6.2003 for all purposes subject to art. 3(1) of the first commencing S.I. and 29.12.2004 "for water purposes") by [Enterprise Act 2002 \(c. 40\), s. 168\(9\), 279, Sch. 9 para. 7\(2\)](#); S.I. 2003/1397, [art. 2\(1\), Sch.](#); S.I. 2004/3233, [art. 2, Sch.](#) (with arts. 3-5)
- F80** Word in s. 17(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 60](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F81** Words in s. 17(2)(b) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 77](#) (with art. 3)
- F82** S. 17(4) substituted (20.6.2003 for all purposes subject to art. 3(1) of the first commencing S.I. and 29.12.2004 "for water purposes") by [Enterprise Act 2002 \(c. 40\), s. 168\(9\), 279, Sch. 9 para. 7\(3\)](#); S.I. 2003/1397, [art. 2\(1\), Sch.](#); S.I. 2004/3233, [art. 2, Sch.](#) (with arts. 3-5)

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

- C4** S. 17(2)(a) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\), art. 16, Sch. 4 para. 10](#)

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## [<sup>F83</sup>CHAPTER 1A

### [<sup>F84</sup>WATER SUPPLY LICENCES AND SEWERAGE LICENCES]

#### Textual Amendments

- F83** Pt. 2 Ch. 1A inserted (1.4.2004 for specified provisions and purposes and 1.8.2005 for further specified provisions and purposes and 1.10.2005 for further specified provisions and 1.12.2005 otherwise) by [Water Act 2003 \(c. 37\)](#), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2004/641, **art. 3(1)**, Sch. 1 (with **art. 6**, Sch. 3); S.I. 2005/968, **art. 3(b)** (with savings in **art. 4**, Sch. 1, 2); S.I. 2005/2714, **arts. 2(h), 3(a)** (with Sch. para. 5)
- F84** Pt. 2 Ch. 1A heading substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 9**; S.I. 2016/465, **art. 2(m)**, Sch. 1 para. 1(e) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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

- C5** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 3(1)** (with reg. 1(1)(c))
- C6** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 5(1)** (with reg. 1(1)(c))
- C7** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c)) (as amended (10.1.2015) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) \(Amendment\) Regulations 2015 \(S.I. 2015/22\)](#), regs. 1(1), 3)
- C8** Pt. 2 Ch. 1A modified (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 3(2)** (with reg. 1(1)(c))

#### *Granting of licences*

### [<sup>F85</sup>17A Water supply licences

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

*Status: Point in time view as at 18/07/2023.*

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- (6) Before giving a general authorisation as regards the Authority, the Secretary of State must consult the Welsh Ministers.
- (7) References in this Act to a water supply licensee are references to a person that is the holder for the time being of a water supply licence.]

#### Textual Amendments

**F85** Ss. 17A, 17AA substituted for s. 17A (1.1.2016 for the substitution of s. 17A(2)-(6), 1.4.2016 for the substitution of s. 17A(1) for specified purposes and ss. 17A(7), 17AA(3)-(5), 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 1\(1\), 94\(3\)](#); [S.I. 2015/1938, art. 3\(a\)\(i\)](#) (with [art. 4](#)); [S.I. 2016/465, art. 2\(a\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#)); [S.I. 2016/1007, art. 2\(a\)](#) (with [arts. 3, 4](#))

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

**F85 17AA**

- (1) Before the Authority grants a water supply licence giving a wholesale authorisation, it must consult—
  - (a) the Secretary of State;
  - (b) the Chief Inspector of Drinking Water;
  - (c) the Environment Agency;
  - (d) the NRBW.
- (2) Before the Authority grants a water supply licence giving a supplementary authorisation, it must consult—
  - (a) the Secretary of State;
  - (b) the Chief Inspector of Drinking Water;
  - (c) the Environment Agency;
  - (d) the Welsh Ministers;
  - (e) the Chief Inspector of Drinking Water for Wales if there is one;
  - (f) the NRBW.
- (3) A water supply licence may not be granted to a water undertaker.
- (4) A water supply licence may not be granted to a person unless that person is a limited company.
- (5) The restriction in subsection (4) does not apply if the water supply licence gives only—
  - (a) a retail authorisation,
  - (b) a restricted retail authorisation, or
  - (c) a retail authorisation and a restricted retail authorisation.]

#### Textual Amendments

**F85** Ss. 17A, 17AA substituted for s. 17A (1.1.2016 for the substitution of s. 17A(2)-(6), 1.4.2016 for the substitution of s. 17A(1) for specified purposes and ss. 17A(7), 17AA(3)-(5), 1.11.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 1\(1\), 94\(3\)](#); [S.I. 2015/1938, art. 3\(a\)\(i\)](#) (with [art. 4](#)); [S.I. 2016/465, art. 2\(a\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#)); [S.I. 2016/1007, art. 2\(a\)](#) (with [arts. 3, 4](#))

*Status: Point in time view as at 18/07/2023.*

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## 17B [F86 Meaning of supply system]

F87(1) .....

F87(2) .....

F87(3) .....

F87(4) .....

[ In this Chapter, references to the supply system of a water undertaker are, in the case  
 F88(4A) of an undertaker whose area is wholly or mainly in England, references to the system comprising the following—

- (a) any reservoirs and other places of storage and any treatment works developed or maintained by the water undertaker for the purpose of complying with its duty under section 37, and
- (b) any water mains and other pipes which it is the water undertaker's duty to develop and maintain by virtue of section 37.]

(5) In this Chapter, references to the supply system of a water undertaker are [F89, in the case of an undertaker whose area is wholly or mainly in Wales,] to the system comprising the following—

- (a) any water mains and other pipes which it is the water undertaker's duty to develop and maintain by virtue of section 37 below and which are used for the purpose of conveying water from the undertaker's treatment works to the premises of customers; and
- (b) any water mains and other pipes which—
  - (i) are used by the undertaker for the purpose of conveying non-domestic water from any of its sources to the premises of customers; and
  - (ii) are not connected to any water mains or pipes falling within paragraph (a) above or to any water mains or other pipes connected to the treatment works mentioned in that paragraph (whether directly or indirectly),

and in sub-paragraph (i) above the reference to non-domestic water is to water supplied other than for domestic or food production purposes.

(6) In subsection (5)(a) above, the reference to treatment works is a reference to the works designated from time to time by the Secretary of State as treatment works for the purposes of this subsection.

(7) Before designating any works for the purposes of subsection (6) above, the Secretary of State shall consult the Assembly.

(8) A list of any works designated for the purposes of subsection (6) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.

F90(9) .....

### Textual Amendments

**F86** S. 17B title substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 10\(2\)](#); S.I. 2017/462, art. 3(k)(iii)

*Status: Point in time view as at 18/07/2023.*

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- F87** S. 17B(1)-(4) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 10\(3\)](#); S.I. 2017/462, art. 3(k)(iii)
- F88** S. 17B(4A) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), [ss. 2\(2\)](#), 94(3); S.I. 2017/462, art. 3(b)
- F89** Words in s. 17B(5) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), [ss. 2\(3\)](#), 94(3); S.I. 2017/462, art. 3(b)
- F90** S. 17B(9) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 10\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(f\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

## **17BA** Sewerage licences

- F91** (1) The Authority may grant to a person a licence in respect of the use of the sewerage system of a sewerage undertaker whose area is wholly or mainly in England (a “sewerage licence”).
- (2) A sewerage licence may give the holder of the licence one or more of the following—
- (a) a retail authorisation;
  - (b) a wholesale authorisation;
  - (c) a disposal authorisation.
- (3) Schedule 2B makes provision as to the authorisations.
- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 4.
- (5) The Authority may exercise the power to grant a sewerage licence only in accordance with a general authorisation given by the Secretary of State.
- (6) References in this Act to a sewerage licensee are references to a person that is the holder for the time being of a sewerage licence.
- (7) References in this Chapter to the sewerage system of a sewerage undertaker are references to the system comprising—
- (a) the system of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that the undertaker is required to provide by section 94, and
  - (b) the lateral drains that the undertaker is required to maintain by section 94.

### **Textual Amendments**

- F91** Ss. 17BA, 17BB inserted (1.1.2016 for the substitution of s. 17BA(2)-(5), 1.4.2016 for the insertion of s. 17BA(1) for specified purposes and ss. 17BA(7), 17BB(2)-(4)) by [Water Act 2014 \(c. 21\)](#), [ss. 4\(1\)](#), 94(3); S.I. 2015/1938, art. 3(b)(i); S.I. 2016/465, art. 2(b)(i) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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

- (1) The Authority must consult the Secretary of State, the Environment Agency and the NRBW before granting a licence that gives—
- (a) a wholesale authorisation, or
  - (b) a disposal authorisation.

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- (2) A sewerage licence granted to a sewerage undertaker may not give the holder—
  - (a) a retail authorisation, or
  - (b) a wholesale authorisation.
- (3) A sewerage licence may not be granted to a person unless that person is a limited company.
- (4) The restriction in subsection (3) does not apply if the sewerage licence gives only a retail authorisation.]

#### Textual Amendments

**F91** Ss. 17BA, 17BB inserted (1.1.2016 for the substitution of s. 17BA(2)-(5), 1.4.2016 for the insertion of s. 17BA(1) for specified purposes and ss. 17BA(7), 17BB(2)-(4)) by [Water Act 2014 \(c. 21\)](#), [ss. 4\(1\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 3\(b\)\(i\)](#); [S.I. 2016/465](#), [art. 2\(b\)\(i\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

### 17C Meaning of household premises

- (1) For the purposes of [<sup>F92</sup>paragraphs 4 and 7(a) of Schedule 2A and paragraph 2 of Schedule 2B], “household premises” means premises in which, or in any part of which, a person has his home.
- (2) The fact that a person has his home in, or in part of, any premises does not mean that the premises are household premises unless the principal use of the premises is as a home.
- (3) The Secretary of State may by regulations make provision as to—
  - (a) the circumstances in which a person is or is not to be treated as having his home in, or in part of, any premises for the purposes of this section; and
  - (b) the factors which are, or are not, to be taken into account in determining the principal use of any premises for those purposes.
- (4) The power to make regulations under subsection (3) above is exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

#### Textual Amendments

**F92** Words in s. 17C(1) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), [s. 94\(3\)](#), [Sch. 7 para. 11](#); [S.I. 2015/1938](#), [art. 3\(f\)\(i\)](#)

### 17D The threshold requirement

- (1) This section applies for the purpose of construing the reference to the threshold requirement in [<sup>F93</sup>paragraph 7(b) of Schedule 2A] in relation to the supply of water to any premises [<sup>F94</sup>in accordance with a restricted retail authorisation].
- (2) The requirement is that, at the time when the [<sup>F95</sup>water supply licensee] first enters into an undertaking with a customer to give the supply, the total quantity of water



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estimated to be supplied to the premises annually pursuant to the undertaking [<sup>F96</sup>is not less than—

- (a) 5 megalitres, in the case of premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in England, and
- (b) 50 megalitres, in the case of premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales].

(3) Any estimate of the quantity of water to be supplied to any premises for the purposes of subsection (2) above shall be made in accordance with guidance issued [<sup>F97</sup>from time to time] by the Authority with the approval of [<sup>F98</sup>the Welsh Ministers].

(4) Any guidance issued under subsection (3) above may, in particular—

- (a) specify—
  - (i) the factors to be, and not to be, taken into account;
  - (ii) the assumptions to be made; and
  - (iii) the method of calculation to be employed, in making estimates; and
- (b) make provision as to the commencement of the annual periods by reference to which estimates are to be made.

<sup>F99</sup>(5) .....

<sup>F100</sup>(6) .....

(7) [<sup>F101</sup>The Welsh Ministers] may make provision by regulations as to the circumstances in which a [<sup>F102</sup>water supply licensee] is not, for the purposes of subsection (2) above, to be treated as entering into an undertaking with a new customer to give a supply of water to any premises <sup>F103</sup>....

(8) [<sup>F104</sup>The Welsh Ministers] may by regulations amend subsection (2) above by substituting, for the quantity of water for the time being specified there, a different quantity of water <sup>F105</sup>....

(9) Regulations under subsection (8) above—

- (a) shall include provision for the amendment made by the regulations not to apply in relation to any undertaking entered into before the date on which the regulations come into force; and
- (b) may include provision for that amendment not to apply in relation to any undertaking which is proposed, but not entered into, before that date.

(10) A statutory instrument containing regulations under subsection (8) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, [<sup>F106</sup>the Assembly].

(11) Before making regulations under subsection (8) above, [<sup>F107</sup>the Welsh Ministers] shall consult—

- (a) the Authority; and
- (b) such other persons (if any) as [<sup>F108</sup>the Welsh Ministers think] it appropriate to consult.

<sup>F109</sup>(12) .....

<sup>F110</sup>(13) .....

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### Textual Amendments

- F93** Words in s. 17D(1) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(2\)\(a\)](#); [S.I. 2015/1938](#), art. 3(f)(ii) (with art. 4)
- F94** Words in s. 17D(1) inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(2\)\(b\)](#); [S.I. 2015/1938](#), art. 3(f)(ii) (with art. 4)
- F95** Words in s. 17D(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(g\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F96** Words in s. 17D(2) substituted (15.12.2011) by [The Water Supply \(Amendment to the Threshold Requirement\) Regulations 2011 \(S.I. 2011/3014\)](#), regs. 1(1), 2 (with reg. 1(2))
- F97** Words in s. 17D(3) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(4\)\(a\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F98** Words in s. 17D(3) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(4\)\(b\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F99** S. 17D(5) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(5\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F100** S. 17D(6) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(6\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F101** Words in s. 17D(7) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(7\)\(a\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F102** Words in s. 17D(7) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(7\)\(b\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F103** Words in s. 17D(7) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(7\)\(c\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F104** Words in s. 17D(8) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(8\)\(a\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F105** Words in s. 17D(8) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(8\)\(b\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F106** Words in s. 17D(10) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(9\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F107** Words in s. 17D(11) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(10\)\(a\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F108** Words in s. 17D(11) substituted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(10\)\(b\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F109** S. 17D(12) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(11\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)
- F110** S. 17D(13) repealed (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 12\(11\)](#); [S.I. 2017/462](#), art. 3(k)(iv) (with art. 11)

## I Guidance

**F111 17DA**

The Authority must publish guidance issued from time to time under—

- (a) section 17D(3),
- (b) paragraph 10 of Schedule 2A, or
- (c) paragraph 4 of Schedule 2B,

in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.]

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#### Textual Amendments

**F111** S. 17DA inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 13](#); S.I. 2015/1938, art. 3(f)(iv)

### 17E Determinations by the Authority

- [<sup>F112</sup>(1) The Authority may determine, in a case referred to it by—
- (a) a water supply licensee or a potential customer of a water supply licensee, or
  - (b) a sewerage licensee or a potential customer of a sewerage licensee,
- whether a proposed supply of water to, or proposed sewerage services for, the customer would be in accordance with what is authorised by the licensee's licence.]
- (2) The matters which the Authority may determine include the following matters—
- (a) the extent of the premises to be supplied for the purposes of [<sup>F113</sup>paragraph 4 or 7(a) or (b) of Schedule 2A];
  - [<sup>F114</sup>(aa) the extent of the premises to be served for the purposes of paragraph 2 of Schedule 2B;]
  - (b) whether the premises to be supplied [<sup>F115</sup>or served] are household premises (as defined in section 17C above); and
  - (c) whether the threshold requirement is satisfied in relation to the premises to be supplied (construed in accordance with section 17D above),
- and also include any other matter the determination of which is relevant to those matters.

#### Textual Amendments

- F112** S. 17E(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 14\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(h\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F113** Words in s. 17E(2)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 14\(3\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(h\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F114** S. 17E(2)(aa) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 14\(3\)\(b\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(h\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F115** Words in s. 17E(2)(b) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 14\(3\)\(c\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(h\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

### 17F Procedure for granting water supply [<sup>F116</sup>and sewerage] licences

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

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- (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.]
- <sup>F118</sup>(2) .....
- <sup>F119</sup>(3) .....
- (4) If <sup>F120</sup>... the Authority proposes to refuse [<sup>F121</sup>a relevant application], <sup>F122</sup>... it shall give to the applicant a notice—
  - (a) stating that <sup>F122</sup>... it proposes to refuse the application;
  - (b) stating the reasons why <sup>F122</sup>... it proposes to refuse the application; and
  - (c) specifying the time within which representations or objections with respect to the proposed refusal may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- <sup>F123</sup>(5) .....
- (6) A licence shall be in writing and, unless revoked or suspended in accordance with any condition contained in it, shall continue in force for such period as may be specified in or determined by or under the licence.
- (7) <sup>F124</sup>As soon as practicable after granting a licence or variation of a licence, ... the Authority shall serve a copy of the licence or licence as varied—
  - (a) on the licence holder;
  - (b) on the Assembly;
  - (c) on the Chief Inspector of Drinking Water;
  - (d) on the Environment Agency;
  - [ on the NRBW;]
  - <sup>F125</sup>(da)
    - (e) on the Council;
    - (f) on each relevant undertaker;
  - [<sup>F126</sup>(g) on each water supply licensee and sewerage licensee (other than the holder of the licence in question);]
  - <sup>F127</sup>(h) .....
  - (i) <sup>F128</sup>... on the Secretary of State.

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) Any sums received <sup>F129</sup>... by the Authority by virtue of this section shall be paid into the Consolidated Fund.

#### Textual Amendments

- F116** Words in s. 17F title inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(i)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F117** S. 17F(1)-(1E) substituted for s. 17F(1) (1.4.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 25(2)**, 94(3); S.I. 2016/465, art. 2(f) (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F118** S. 17F(2) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 25(3)**, 94(2)(f)
- F119** S. 17F(3) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 25(3)**, 94(2)(f)
- F120** Words in s. 17F(4) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(3)(a)**; S.I. 2015/1938, art. 3(f)(v)
- F121** Words in s. 17F(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), **ss. 25(4)**, 94(3); S.I. 2016/465, art. 2(f) (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F122** Words in s. 17F(4) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(3)(b)**; S.I. 2015/1938, art. 3(f)(v)
- F123** S. 17F(5) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 25(3)**, 94(2)(f)
- F124** Words in s. 17F(7) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(4)(a)**; S.I. 2015/1938, art. 3(f)(v)
- F125** S. 17F(7)(da) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 227** (with **Sch. 7**)
- F126** S. 17F(7)(g) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(4)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(i)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F127** S. 17F(7)(h) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(4)(c)**; S.I. 2015/1938, art. 3(f)(v)
- F128** Words in s. 17F(7)(i) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(4)(d)**; S.I. 2015/1938, art. 3(f)(v)
- F129** Words in s. 17F(8) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 15(5)**; S.I. 2015/1938, art. 3(f)(v)

#### **Applications forwarded by the Water Industry Commission for Scotland**

**F130** **17FA**

- (1) The Secretary of State may by regulations make provision about—
- treating a 2005 Act application for the grant of a water services licence under section 6 of the 2005 Act as being also an application under section 17F for the grant of a water supply licence giving only a retail authorisation or a restricted retail authorisation or both;
  - treating a 2005 Act application for the grant of a sewerage services licence under section 6 of the 2005 Act as being also an application under section 17F for the grant of a sewerage licence giving only a retail authorisation.
- (2) The regulations may in particular make provision about—
- the circumstances in which, and the conditions subject to which, a 2005 Act application is to be treated as an application under section 17F for a water supply or sewerage licence giving a particular authorisation or particular authorisations;
  - the time at which an application is to be treated as having been made;
  - the processing of an application by the Authority.

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Provision under subsection (2)(a) may require a 2005 Act application that is forwarded to the Authority—
- (a) to contain, or to be accompanied by, such information or information of such description as is specified by the regulations;
  - (b) to be accompanied by such documents or documents of such descriptions as are specified by the regulations;
  - (c) to be accompanied by a fee, or a fee of a description, specified by the regulations.
- (4) In this section and section 17FB—
- “the 2005 Act” means the Water Services etc. (Scotland) Act 2005;
- “2005 Act application” means an application under paragraph 1 of Schedule 2 to the 2005 Act.

#### **Textual Amendments**

**F130** Ss. 17FA, 17FB inserted (18.12.2015 for the insertion of s. 17FA, 1.4.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 6\(2\), 94\(3\)](#); [S.I. 2015/1938](#), [art. 2\(a\)\(ii\)](#); [S.I. 2016/465](#), [art. 2\(c\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

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

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

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In this section—

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

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

#### Textual Amendments

**F130** Ss. 17FA, 17FB inserted (18.12.2015 for the insertion of s. 17FA, 1.4.2016 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 6(2)**, 94(3); [S.I. 2015/1938](#), [art. 2\(a\)\(ii\)](#); [S.I. 2016/465](#), [art. 2\(c\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), [art. 16](#))

### *Licence conditions*

#### **17G** [<sup>F131</sup>Licence conditions]

(1) [<sup>F132</sup>A licence under this Chapter] may include—

- (a) such conditions as appear to <sup>F133</sup>... the Authority to be requisite or expedient having regard to the duties imposed on <sup>F134</sup>... it by Part 1 of this Act;
- (b) conditions requiring the rendering to [<sup>F135</sup>the Authority] of a payment on the grant of a [<sup>F136</sup>licence under this Chapter], or payments while such a licence is in force, or both, of such amount or amounts as may be determined by or under the conditions.

(2) Conditions may be included by virtue of subsection (1)(a) above in a water supply licence whether or not they are connected with the supply of water or the introduction of water into a water undertaker’s supply system.

[ Conditions may be included by virtue of subsection (1)(a) in a sewerage licence <sup>F137</sup>(2A) whether or not they are connected with—

- (a) effectual dealing with the contents of sewers, or
- (b) the use of the sewerage system of a sewerage undertaker.]

(3) Conditions included in a [<sup>F138</sup>licence under this Chapter] may—

- (a) require the holder of the licence to comply with any direction given by a specified relevant person as to specified matters or matters which are of a specified description;
- (b) require the holder of the licence to do or not to do specified things or things which are of a specified description, except in so far as a specified relevant person consents to the holder’s not doing or doing them; and
- (c) provide for the reference to and determination by a specified relevant person of specified questions, or questions which are of a specified description, which arise under or in connection with the licence.

(4) For the purposes of subsection (3) above—

- (a) the following are relevant persons—
  - (i) the Secretary of State;
  - (ii) the Authority;

*Status: Point in time view as at 18/07/2023.*

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- (iii) [<sup>F139</sup>so far as subsection (3) applies to water supply licences,] the Assembly;
- (iv) the Environment Agency; <sup>F140</sup> ...
- [ the NRBW; and]
- <sup>F141</sup>(v)
- (b) “specified” means specified in the licence in question.
- (5) Conditions included in a [<sup>F142</sup>licence under this Chapter] may contain provision for the conditions to have effect, cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined in accordance with the conditions.
- (6) Any such condition as is referred to in subsection (5) above shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of a licence.
- (7) Any sums received by [<sup>F143</sup>the Authority] by virtue of this section shall be paid into the Consolidated Fund.

#### Textual Amendments

- F131** S. 17G title substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(2)**; S.I. 2015/1938, art. 3(f)(vii)
- F132** Words in s. 17G(1) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(3)(a)**; S.I. 2015/1938, art. 3(f)(vii)
- F133** Words in s. 17G(1)(a) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(3)(b)**; S.I. 2015/1938, art. 3(f)(vii)
- F134** Words in s. 17G(1)(a) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(3)(c)**; S.I. 2015/1938, art. 3(f)(vii)
- F135** Words in s. 17G(1)(b) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(3)(d)**; S.I. 2015/1938, art. 3(f)(vii)
- F136** Words in s. 17G(1)(b) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(3)(e)**; S.I. 2015/1938, art. 3(f)(vii)
- F137** S. 17G(2A) inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(4)**; S.I. 2015/1938, art. 3(f)(vii)
- F138** Words in s. 17G(3) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(5)**; S.I. 2015/1938, art. 3(f)(vii)
- F139** Words in s. 17G(4)(a)(iii) inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(6)**; S.I. 2015/1938, art. 3(f)(vii)
- F140** Word in s. 17G(4)(a)(iv) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 228(2)** (with Sch. 7)
- F141** S. 17G(4)(a)(v) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 228(3)** (with Sch. 7)
- F142** Words in s. 17G(5) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(7)**; S.I. 2015/1938, art. 3(f)(vii)
- F143** Words in s. 17G(7) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 16(8)**; S.I. 2015/1938, art. 3(f)(vii)

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

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))



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*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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## 17H Standard conditions of water supply licences

- [<sup>F144</sup>(1) The Secretary of State may determine the conditions that are to be the standard conditions of water supply licences granted by the Authority.
- (1A) Before determining the standard conditions, the Secretary of State must consult the Welsh Ministers as regards conditions relating to a restricted retail authorisation or a supplementary authorisation.
- (1B) The Secretary of State is to publish the standard conditions in such manner as the Secretary of State considers appropriate.
- (2) The standard conditions may be different depending on the different authorisations or combinations of authorisations to which the conditions are to relate.
- (3) The power to determine standard conditions in relation to water supply licences giving a particular authorisation or a particular combination of authorisations may be exercised only before the grant of the first licence to give that authorisation or that particular combination of authorisations (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).]
- (4) The standard conditions for the purposes of water supply licences [<sup>F145</sup>giving any particular authorisation or combination of authorisations] may contain provision—
- for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
  - for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and
  - for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
- (5) Subject to subsection (6) below, each condition which is a standard condition shall be incorporated by reference in each water supply licence (or in each such licence to which the standard condition applies).
- (6) Subject to the following provisions of this section, <sup>F146</sup>... the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as <sup>F147</sup>... it considers requisite to meet the circumstances of a particular case.
- (7) Before excluding any standard conditions or making any modifications under subsection (6) above, <sup>F148</sup>... the Authority shall give notice—
- stating that <sup>F149</sup>... it proposes to exclude the conditions or make the modifications and setting out the effect of so doing;
  - stating the reasons why <sup>F150</sup>... it proposes to exclude the conditions or make the modifications; and
  - specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (8) A notice under subsection (7) above shall be given—

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- (a) by publishing the notice in such manner as <sup>F151</sup>... the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and
- (b) by serving a copy of the notice—
- [<sup>F152</sup>(i) if the notice relates to a water supply licence giving a restricted retail authorisation or a restricted retail authorisation and a supplementary authorisation, on the Welsh Ministers;]
- (ii) on the Chief Inspector of Drinking Water;
- <sup>F153</sup>(iii) .....
- (iv) <sup>F154</sup>... on the Secretary of State.
- [ on the Water Industry Commission for Scotland.]
- <sup>F155</sup>(v)
- (9) If, within the time specified in the notice under subsection (7) above, the Secretary of State (after consulting [<sup>F156</sup>the Welsh Ministers in a case where notice was served on them under subsection (8)(b)(i)]) directs the Authority not to exclude or modify any standard condition, the Authority shall comply with the direction.
- (10) The <sup>F157</sup>... Authority shall not exclude any conditions, or make any modifications, under subsection (6) above unless <sup>F158</sup>... it is of the opinion that the exclusions or modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and
- (b) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).
- (11) The modification under subsection (6) above of part of a standard condition shall not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.

#### Textual Amendments

- F144** S. 17H(1)-(3) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(2\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F145** Words in s. 17H(4) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(3\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F146** Words in s. 17H(6) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(4\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F147** Words in s. 17H(6) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(4\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F148** Words in s. 17H(7) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(5\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F149** Words in s. 17H(7)(a) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(5\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F150** Words in s. 17H(7)(b) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(5\)\(c\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F151** Words in s. 17H(8)(a) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F152** S. 17H(8)(b)(i) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)

*Status: Point in time view as at 18/07/2023.*

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- F153** S. 17H(8)(b)(iii) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(c\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F154** Words in s. 17H(8)(b)(iv) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(d\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F155** S. 17H(8)(b)(v) inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(6\)\(e\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F156** Words in s. 17H(9) substituted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(7\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F157** Words in s. 17H(10) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(8\)\(a\)](#); S.I. 2015/1938, art. 3(f)(vii)
- F158** Words in s. 17H(10) repealed (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 17\(8\)\(b\)](#); S.I. 2015/1938, art. 3(f)(vii)

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

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))

**Standard conditions of sewerage licences**

F159

- 17HA**
- (1) The Secretary of State may determine the conditions that are to be the standard conditions of sewerage licences granted by the Authority.
  - (2) The Secretary of State is to publish the standard conditions in such manner as the Secretary of State considers appropriate.
  - (3) The standard conditions may be different depending on the different authorisations or combinations of authorisations to which the conditions are to relate.
  - (4) The power to determine standard conditions in relation to sewerage licences giving a particular authorisation or a particular combination of authorisations may be exercised only before the grant of the first licence to give that authorisation or that particular combination of authorisations (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).
  - (5) The standard conditions for the purposes of sewerage licences giving any particular authorisation or combination of authorisations may contain provision—
    - (a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
    - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and
    - (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
  - (6) Subject to subsection (7), each condition which is a standard condition is to be incorporated by reference in each sewerage licence (or in each such licence to which the standard condition applies).
  - (7) Subject to the following provisions of this section, the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as the Authority considers requisite to meet the circumstances of a particular case.

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) Before excluding any standard conditions or making any modifications under subsection (7), the Authority must give notice—
- (a) stating that the Authority proposes to exclude the conditions or make the modifications and setting out the effect of so doing;
  - (b) stating the reasons why the Authority proposes to exclude the conditions or make the modifications; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,
- and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (9) A notice under subsection (8) must be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and
  - (b) by serving a copy of the notice—
    - (i) on the Secretary of State;
    - (ii) on the Environment Agency;
    - (iii) on the NRBW;
    - (iv) on the Water Industry Commission for Scotland.
- (10) If, within the time specified in the notice under subsection (8), the Secretary of State directs the Authority not to exclude or modify any standard condition, the Authority must comply with the direction.
- (11) The Authority may not exclude any conditions, or make any modifications, under subsection (7) unless the Authority is of the opinion that the exclusions or modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of sewerage licences; and
  - (b) no other holder of a sewerage licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being granted).
- (12) The modification under subsection (7) of part of a standard condition is not to prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.]

#### Textual Amendments

**F159** S. 17HA inserted (1.1.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 18](#); S.I. 2015/1938, art. 3(f)(vii)

## 171 [F160 Modification of licences by agreement]

- (1) Subject to the following provisions of this section, the Authority may modify the [F161 conditions of—
- (a) a particular water supply licence, or
  - (b) a particular sewerage licence.]

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—
- (a) are requisite to meet the circumstances of the particular case; and
  - (b) are such that—
    - (i) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences [<sup>F162</sup>or, as the case may be, sewerage licences]; and
    - (ii) no other holder of a water supply licence [<sup>F163</sup>or, as the case may be, a sewerage licence] would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (3) Before making modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on—
    - (i) the licence holder;
    - (ii) the Council;
    - (iii) the Secretary of State;
    - (iv) [<sup>F164</sup>if the notice relates to a water supply licence,] the Assembly; and
    - (v) the Chief Inspector of Drinking Water.
- (5) If, within the period specified in the notice under subsection (3) above, the Secretary of State <sup>F165</sup>... directs the Authority not to make any modification, the Authority shall comply with the direction.
- [ The Secretary of State is to consult the Welsh Ministers before giving a direction under <sup>F166</sup>(5A) subsection (5) in relation to a water supply licence.]
- (6) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

#### Textual Amendments

**F160** S. 171 title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

**F161** Words in s. 171(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F162** Words in s. 17I(2)(b)(i) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(4\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F163** Words in s. 17I(2)(b)(ii) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(4\)\(b\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F164** Words in s. 17I(4)(b)(iv) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(5\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F165** Words in s. 17I(5) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(6\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F166** S. 17I(5A) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 19\(7\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))

**17J** [<sup>F167</sup>**Modification of standard conditions**]

- (1) Subject to the following provisions of this section, the Authority [<sup>F168</sup>may modify—
- (a) the standard conditions of water supply licences, or
  - (b) the standard conditions of sewerage licences.]

[ Modifications may relate to—

- <sup>F169</sup>(1A) (a) standard conditions contained in all water supply licences or sewerage licences, or
- (b) standard conditions contained in those water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations.]

- (2) Where at any time the Authority modifies the standard conditions of [<sup>F170</sup>water supply licences or sewerage licences] under this section the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of [<sup>F171</sup>any licence so affected].

- (3) Before making any modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on—
    - (i) each relevant licence holder;

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- (ii) the Council;
  - (iii) the Secretary of State;
  - (iv) [<sup>F172</sup>if the notice relates to a water supply licence,] the Assembly; and
  - (v) the Chief Inspector of Drinking Water.
- (5) If, within the time specified in the notice under subsection (3) above, the Secretary of State <sup>F173</sup>... directs the Authority not to make any modification, the Authority shall comply with the direction.
- [<sup>F174</sup>The Secretary of State is to consult the Welsh Ministers before giving a direction under subsection (5) in relation to a water supply licence.]
- (6) The Authority may not under this section make any modifications of the standard conditions of [<sup>F175</sup>water supply licences or sewerage licences] unless—
- (a) no notice of objection to those modifications is given by any relevant licence holder to the Authority within the time specified in the notice under subsection (3) above;
  - (b) if one or more relevant licence holders give notice of objection to the Authority within that time—
    - (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be specified in an order made by statutory instrument by the Secretary of State; and
    - (ii) the percentage given by subsection (7) below is less than such percentage as may be so specified; or
  - (c) subsection (8) below applies to the case.
- (7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share at such time and in such manner as may be specified in an order under subsection (6) above.
- (8) This subsection applies where the Authority is satisfied that—
- (a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
  - (b) the modifications would remove or reduce the burden without removing any necessary protection; and
  - (c) the modifications are such that no holder of a water supply licence [<sup>F176</sup>or, as the case may be, a sewerage licence] would be unduly disadvantaged in competing with other holders of such licences.
- (9) An order under subsection (6) above may include such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (10) Before making an order under subsection (6) above [<sup>F177</sup>in relation to the standard conditions of water supply licences], the Secretary of State shall consult the Assembly.
- (11) A statutory instrument containing an order under subsection (6) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) Where the Authority modifies the standard conditions of [<sup>F178</sup>water supply licences or sewerage licences], the Authority shall—

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- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in [<sup>F179</sup>water supply licences or, as the case may be, sewerage licences] granted after that time; and
- (b) publish the modifications in such manner as it considers appropriate.

[<sup>F180</sup>Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.]

- (13) In this section “relevant licence holder”, in relation to proposed modifications of standard conditions of [<sup>F181</sup>water supply licences or sewerage licences or of such of those licences as grant a particular authorisation or combination of authorisations], means the holder of a licence of that description—
- (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
  - (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 17H(4) above) at the time specified in the notice under subsection (3) above.

#### Textual Amendments

- F167** S. 17J title substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F168** Words in s. 17J(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F169** S. 17J(1A) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F170** Words in s. 17J(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(5\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F171** Words in s. 17J(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(5\)\(b\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F172** Words in s. 17J(4)(b)(iv) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(6\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F173** Words in s. 17J(5) repealed (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(7\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F174** S. 17J(5A) inserted (1.4.2016) by [Explanatory Note 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(8\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F175** Words in s. 17J(6) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(9\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F176** Words in s. 17J(8)(c) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(10\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F177** Words in s. 17J(10) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(11\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F178** Words in s. 17J(12) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\)](#), [Sch. 7 para. 20\(12\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)



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- F179** Words in s. 17J(12)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 20\(12\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F180** Words in s. 17J(12) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 20\(12\)\(c\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F181** Words in s. 17J(13) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 20\(13\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))

**17K** [<sup>F182</sup>**Modification references to competition authority**]

- (1) The Authority may make to the [<sup>F183</sup>CMA] a reference which is so framed as to require the [<sup>F184</sup>CMA to] investigate and report on the questions—
- (a) whether any matters which—
- (i) relate to the carrying on of activities authorised or regulated by [<sup>F185</sup>a particular water supply or sewerage licence]; and
- (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the conditions of the licence.
- (2) The Authority may make to the Commission a reference which is so framed as to require the [<sup>F186</sup>CMA] to investigate and report on the questions—
- (a) whether any matters which—
- (i) relate to the carrying on of activities authorised or regulated by [<sup>F187</sup>water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations]; and
- (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the standard conditions of licences of that description.
- (3) The Authority may, at any time, by notice given to the [<sup>F186</sup>CMA] vary a reference under this section by—
- (a) adding to the matters specified in the reference; or
- (b) excluding from the reference some of the matters so specified, and on receipt of any such notice the [<sup>F186</sup>CMA] shall give effect to the variation.
- (4) The Authority may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [<sup>F186</sup>CMA] in carrying out the investigation on the reference—

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- (a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the relevant conditions by which, in its opinion, those effects could be remedied or prevented.
- (5) As soon as practicable after making a reference under this section or a variation of such a reference, the Authority shall—
- (a) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and
  - (b) serve a copy of the reference or variation on—
    - (i) the licence holder or, as the case may be, the relevant licence holders;
    - (ii) the Council;
    - (iii) the Secretary of State;
    - (iv) [<sup>F188</sup>in a case relating to a water supply licence or licences,] the Assembly; and
    - (v) the Chief Inspector of Drinking Water.
- (6) If, before the end of the period of twenty-eight days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the [<sup>F189</sup>CMA]—
- (a) not to proceed with the reference; or
  - (b) not to give effect to the variation,
- the [<sup>F189</sup>CMA] shall comply with the direction.
- (7) It shall be the duty of the Authority, for the purpose of assisting the [<sup>F189</sup>CMA] in carrying out an investigation on a reference under this section or in carrying out functions under section 17P below, to give to the [<sup>F189</sup>CMA]—
- (a) any information in the Authority’s possession which relates to matters falling within the scope of the investigation or the carrying out of those functions and which is either—
    - (i) requested by the [<sup>F189</sup>CMA] for that purpose; or
    - (ii) information which, in the Authority’s opinion, it would be appropriate for that purpose to give to the [<sup>F189</sup>CMA] without any such request; and
  - (b) any other assistance which the [<sup>F189</sup>CMA] may require, and which it is within the Authority’s power to give, in relation to any such matters,
- and the [<sup>F189</sup>CMA], for the purpose of carrying out any such investigation or such functions, shall take account of any information given to it for that purpose under this subsection.
- (8) In this section and the following provisions of this Chapter—
- “relevant conditions”—
- (a) in relation to a reference under subsection (1) above, means the conditions of the licence to which the reference relates; and
  - (b) in relation to a reference under subsection (2) above, means the standard conditions of the licences to which the reference relates; and
- “relevant licence holder” means the holder of a licence to which a reference under subsection (2) above relates.

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the [F190CMA] shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Authority by Part 1 of this Act.

[ The functions of the CMA with respect to a reference under this section are to be F191(10) 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 (including functions relating to the making of modifications following a report on a reference, and functions under sections 109 to 115 of the Enterprise Act 2002, as applied by sections 17M and 17Q).]

#### Textual Amendments

- F182** S. 17K title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 21(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F183** Word in s. 17K(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 61(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F184** Words in s. 17K(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 61(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F185** Words in s. 17K(1)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 21(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F186** Words in ss. 17K(2)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 61(3)**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F187** Words in s. 17K(2)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 21(4)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F188** Words in s. 17K(5)(b)(iv) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 21(5)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F189** Words in s. 17K(6)(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 61(3)**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F190** Word in s. 17K(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 61(3)**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F191** S. 17K(10) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 61(4)**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)

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

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))
- C10** S. 17K applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 5(2)** (with reg. 1(1)(c)) (as amended (10.1.2015) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) \(Amendment\) Regulations 2015 \(S.I. 2015/22\)](#), regs. 1(1), **4(a)**)

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## 17L References under section 17K: time limits

- (1) Every reference under section 17K above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the [<sup>F192</sup>CMA] on a reference under section 17K above shall not have effect (and no action shall be taken in relation to it under section 17O below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the [<sup>F192</sup>CMA] and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
  - (a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

### Textual Amendments

**F192** Words in s. 17L(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 62](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### Modifications etc. (not altering text)

**C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))

**C11** Ss. 17L, 17M applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 5\(3\)](#) (with reg. 1(1)(c))

## 17M References under section 17K: powers of investigation

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [<sup>F193</sup>(1A),] (2) and (3) below, for the purposes of references under section 17K above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).

*Status: Point in time view as at 18/07/2023.*

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[ Section 109 shall, in its application by virtue of subsection (1) above, have effect as <sup>F194</sup>(1A) if—

(a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 17K of the Water Industry Act 1991.”,  
and

(b) subsection (8A) were omitted.]

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

(a) subsection (2) were omitted; <sup>F195</sup>...

[ after subsection (3), there were inserted—  
<sup>F196</sup>(aa)

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

(b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

[<sup>F197</sup>(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

“(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.”.]

(4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.

(5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

#### Textual Amendments

**F193** Word in s. 17M(1) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(2)** (with art. 3, Sch. 2 para. 2)

**F194** S. 17M(1A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(3)** (with art. 3, Sch. 2 para. 2)

**F195** Word in s. 17M(2)(a) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(4)(a)** (with art. 3, Sch. 2 para. 2)

**F196** S. 17M(2)(aa) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(4)(b)** (with art. 3, Sch. 2 para. 2)

*Status: Point in time view as at 18/07/2023.*

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**F197** S. 17M(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 78(5)** (with art. 3, Sch. 2 para. 2)

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

**C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))

**C11** Ss. 17L, 17M applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 5(3)** (with reg. 1(1)(c))

**17N** [<sup>F198</sup>**Reports on modification references**]

- (1) In making a report on a reference under section 17K above, the [<sup>F199</sup>CMA] —
  - (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of its conclusions;
  - (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) For the purposes of section 17O below, a conclusion contained in a report of the [<sup>F200</sup>CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [<sup>F201</sup>by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference].
- (3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 17K above as the conclusions of the [<sup>F202</sup>CMA], the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [<sup>F202</sup>CMA] on a reference under section 17K above.
- (5) In making any report on a reference under section 17K above the [<sup>F202</sup>CMA] must have regard to the following considerations before disclosing any information.
- (6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [<sup>F202</sup>CMA] thinks is contrary to the public interest.
- (7) The second consideration is the need to exclude from disclosure (so far as practicable)
  - (a) commercial information whose disclosure the [<sup>F202</sup>CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual whose disclosure the [<sup>F202</sup>CMA] thinks might significantly harm the individual's interests.

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- (8) The third consideration is the extent to which the disclosure of the information mentioned in subsection (7)(a) or (b) above is necessary for the purposes of the report.
- (9) A report of the [<sup>F203</sup>CMA] on a reference under section 17K above shall be made to the Authority.
- (10) Subject to subsection (13) below, the Authority shall—
- (a) on receiving a report on a reference under section 17K(1) above, serve a copy of it on—
    - (i) the licence holder;
    - (ii) the Council;
    - (iii) the Secretary of State; and
    - (iv) [<sup>F204</sup>if the report relates to a water supply licence,] the Assembly; and
  - (b) not earlier than the relevant time, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (11) Subject to subsection (13) below, the Authority shall—
- (a) on receiving a report on a reference under section 17K(2) above, serve a copy of it on—
    - (i) the Secretary of State; and
    - (ii) [<sup>F205</sup>if the report relates to water supply licences,] the Assembly; and
  - (b) not earlier than the relevant time—
    - (i) serve another copy on each relevant licence holder; and
    - (ii) not less than twenty-four hours after complying with subparagraph (i) above, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (12) For the purposes of subsections (10) and (11) above, the “relevant time” means—
- (a) fourteen days after the copy of the report in question is received by the Secretary of State and [<sup>F206</sup>if the report relates to water supply licences,] the Assembly, or
  - (b) if copies are received by them on different days, fourteen days after the later day.
- (13) Subsection (14) below applies if it appears to the Secretary of State that the publication of any matter in a report on a reference under section 17K(1) or (2) above would be against—
- (a) the public interest; or
  - (b) the commercial interests of any person.
- (14) The Secretary of State may, not later than the relevant time for the purposes of subsection (10) or (11) above, direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be served and published as mentioned in paragraph (b) of that subsection; and the Authority shall comply with any such direction.

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### Textual Amendments

- F198** S. 17N title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 22\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F199** Word in s. 17N(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 63\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F200** Word in s. 17N(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 63\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F201** Words in s. 17N(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 63\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F202** Word in s. 17N(3)-(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 63\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F203** Word in s. 17N(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 63\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F204** Words in s. 17N(10)(a)(iv) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 22\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F205** Words in s. 17N(11)(a)(ii) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 22\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F206** Words in s. 17N(12)(a) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 22\(5\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

### Modifications etc. (not altering text)

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 4](#) (with reg. 1(1)(c))
- C12** S. 17N applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 5\(4\)](#) (with reg. 1(1)(c))

## 170 [F207 Modification of licences following report]

- (1) Where a report of the [F208 CMA] on a reference under section 17K above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
  - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
  - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and
  - (d) specifies modifications by which those effects could be remedied or prevented,

the Authority shall, subject to the following provisions of this section, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- (2) Where at any time it modifies under subsection (1) above [F209 —
- (a) the standard conditions of water supply licences or sewerage licences, or
  - (b) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations,]



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in consequence of a reference under section 17K(2) above, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.

- (3) Before making modifications under this section, the Authority shall have regard to the modifications specified in the report.
- (4) Before making modifications under this section, the Authority shall give notice—
  - (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (4) above shall be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications;
  - (b) by serving a copy of the notice on the holder of the licence in question or, as the case may be, the relevant licence holders; and
  - (c) by serving a copy of the notice on—
    - (i) the Council;
    - (ii) the Secretary of State;
    - (iii) [<sup>F210</sup>in a case relating to a water supply licence or licences,] the Assembly; and
    - (iv) the Chief Inspector of Drinking Water.
- (6) After considering any representations or objections made in response to proposals set out in a notice under subsection (4) above, the Authority shall give notice to the [<sup>F211</sup>CMA]—
  - (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
  - (b) stating the reasons for making the modifications.
- (7) The Authority shall include with the notice under subsection (6) above a copy of any representations or objections received in relation to the notice under subsection (4) above.
- (8) If the period of four weeks from the date on which the notice under subsection (6) above is given elapses without a direction under section 17P(1)(a) below having been given to it, the Authority shall—
  - (a) make the modifications set out in the notice; or
  - (b) if a direction under section 17P(1)(b) below has been given, make the modifications which are not specified in the direction.
- (9) The modification under subsection (1) above of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

*Status: Point in time view as at 18/07/2023.*

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- (10) Where at any time it modifies under subsection (1) above the standard conditions of [F<sup>212</sup>water supply licences or sewerage licences] in consequence of a reference under section 17K(2) above, the Authority shall—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in [F<sup>213</sup>water supply licences or, as the case may be, sewerage licences] granted after that time; and
  - (b) publish the modifications made for those purposes in such manner as it considers appropriate.

[F<sup>214</sup>Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.]

#### Textual Amendments

- F207** S. 170 title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 23(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F208** Word in s. 170(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 64**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F209** Words in s. 170(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 23(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F210** Words in s. 170(5)(c)(iii) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 23(4)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F211** Word in s. 170(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 64**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F212** Words in s. 170(10) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 23(5)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F213** Words in s. 170(10)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 23(5)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F214** Words in s. 170(10) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 23(5)(c)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))
- C13** S. 170 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 5(5)** (with reg. 1(1)(c))

#### 17P [F<sup>215</sup>Power of veto following report]

- (1) The [F<sup>216</sup>CMA] may, within the period of four weeks after the date on which it is given a notice under section 17O(6) above, direct the Authority—
- (a) not to make the modifications set out in that notice; or
  - (b) not to make such of the modifications as may be specified in the direction;

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and the Authority shall comply with any such direction.

- (2) The Secretary of State may—
- (a) within the period of four weeks after the date on which the [F216CMA] is given a notice under section 17O(6) above; and
  - (b) on the application of the [F216CMA] ,
- direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 17O(8) above) shall be extended by fourteen days.
- (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 17O(6)(a) above as appear to the [F216CMA] not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the [F216CMA] gives a direction under subsection (1) above, it shall—
- (a) give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
  - (b) make such modifications itself of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
    - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
    - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 17O(8)(b) above.
- (5) In exercising its power under subsection (4)(b) above the [F216CMA] shall have regard to the matters as respects which duties are imposed on the Authority by Part 1 of this Act.
- (6) Before making modifications under subsection (4)(b) above the [F216CMA] shall give notice—
- (a) stating that it proposes to make the modifications and setting them out;
  - (b) stating the reason why it proposes to make them;
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) above shall be given—
- (a) by publishing the notice in such manner as the [F216CMA] considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications;
  - (b) by serving a copy of the notice on—
    - (i) the Authority;
    - (ii) the holder of the licence in question or, as the case may be, the relevant licence holders;
    - (iii) the Council;
    - (iv) the Secretary of State;

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- (v) [<sup>F217</sup>if the reference relates to water supply licences,] the Assembly;  
and  
(vi) the Chief Inspector of Drinking Water.
- (8) After making modifications under this section the [<sup>F216</sup>CMA] shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where, in consequence of a reference under section 17K(2) above, the [<sup>F218</sup>CMA] modifies under subsection (4)(b) above [<sup>F219</sup>—
- (a) the standard conditions of water supply licences or sewerage licences, or
  - (b) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations, ]
- the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.
- (11) Where, in consequence of a reference under section 17K(2) above, the [<sup>F218</sup>CMA] modifies under subsection (4)(b) above the standard conditions of [<sup>F220</sup>water supply licences or sewerage licences], the Authority shall—
- (a) make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in [<sup>F221</sup>water supply licences or, as the case may be, sewerage licences] granted after that time, and
  - (b) publish the modifications made for those purposes in such manner as it considers appropriate.
- [<sup>F222</sup>Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.]

#### Textual Amendments

- F215** S. 17P title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 24\(2\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F216** Words in s. 17P(1)-(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 65\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F217** Words in s. 17P(7)(b)(v) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 24\(3\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F218** Words in s. 17P(10)-(11) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 65\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F219** Words in s. 17P(10) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 24\(4\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F220** Words in s. 17P(11) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 24\(5\)\(a\)](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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**F221** Words in s. 17P(11)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 24\(5\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

**F222** Words in s. 17P(11) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 24\(5\)\(c\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

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

**C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 4](#) (with [reg. 1\(1\)\(c\)](#))

**C14** S. 17P applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 5\(6\)](#) (with [reg. 1\(1\)\(c\)](#)) (as amended (10.1.2015) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) \(Amendment\) Regulations 2015 \(S.I. 2015/22\), regs. 1\(1\), 4\(b\)](#))

**17Q Section 17P: supplementary**

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8) of section 17P above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 17P above, or publishing any notice under subsection (8) of that section, the [F<sup>223</sup>CMA] must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [F<sup>223</sup>CMA] thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable)
  - (a) commercial information whose disclosure the [F<sup>223</sup>CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual whose disclosure the [F<sup>223</sup>CMA] thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [F<sup>224</sup>(6A),] (7) and (8) below, for the purposes of any investigation by the [F<sup>225</sup>CMA] for the purposes of the exercise of its functions under section 17P above, as they apply for the purposes of any investigation on references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).

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[ Section 109 shall, in its application by virtue of subsection (6) above, have effect as <sup>F226</sup>(6A) if—

(a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 17P of the Water Industry Act 1991.”, and

(b) subsection (8A) were omitted.]

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

(a) subsection (2) were omitted,

<sup>F227</sup>(b) after subsection (3), there were inserted—

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA of a notice under section 17P(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the CMA under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

(c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—

(ii) if earlier, the day on which a notice is published by the <sup>F228</sup>CMA] under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the <sup>F228</sup>CMA] under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.

(9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.

(10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

#### Textual Amendments

**F223** Words in ss. 17Q(2)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 66\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F224** Word in s. 17Q(6) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 79\(2\)](#) (with art. 3, Sch. 2 para. 2)

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- F225** Word in s. 17Q(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 66(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F226** S. 17Q(6A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 79(3)** (with art. 3, Sch. 2 para. 2)
- F227** S. 17Q(7)(b) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 79(4)** (with art. 3, Sch. 2 para. 2)
- F228** Word in s. 17Q(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 66(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))
- C15** S. 17Q applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 5(7)** (with reg. 1(1)(c))

**17R** [<sup>F229</sup>**Modification by order under other enactments**]

- (1) Where the [<sup>F230</sup>CMA] or the Secretary of State (the “relevant authority”) makes a relevant order, the order may also provide for the modification of—
- [<sup>F231</sup>(a) the conditions of a particular water supply or sewerage licence,  
(b) the standard conditions of water supply licences or sewerage licences, or  
(c) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations,]
- to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
- (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by [<sup>F232</sup>a water supply licence or sewerage licence]; or
- (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by [<sup>F233</sup>a water supply licence or sewerage licence]; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [<sup>F234</sup>or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by [<sup>F235</sup>a water supply licence or sewerage licence].
- (3) The modification under subsection (1)(a) above of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (4) Where at any time the relevant authority modifies under [<sup>F236</sup>subsection (1)(b) or (c)] above [<sup>F237</sup>the standard conditions of water supply licences or sewerage licences or

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of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations], the relevant authority—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
  - (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences of that description granted before that time.
- (5) Where at any time the relevant authority modifies standard conditions of [<sup>F238</sup>water supply licences or sewerage licences] under subsection (4)(a) above for the purposes of their incorporation in licences, the relevant authority shall publish those modifications in such manner as the relevant authority considers appropriate.
- (6) Expressions used in subsection (2) above and in Part 3 or 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.]

#### Textual Amendments

- F229** S. 17R title substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 25(2)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F230** Word in s. 17R(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 67**; S.I. 2014/416, art. 2(1)(d) (with **Sch.**)
- F231** Ss. 17R(1)(a)-(c) substituted for s. 17R(1)(a)(b) (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 25(3)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F232** Words in s. 17R(2)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 25(4)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F233** Words in s. 17R(2)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 25(4)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F234** Words in s. 17R(2)(b) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 80** (with art. 3)
- F235** Words in s. 17R(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 25(4)(c)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F236** Words in s. 17R(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 25(5)(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F237** Words in s. 17R(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 25(5)(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F238** Words in s. 17R(5) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 25(6)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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

- C9** Pt. 2 Ch. 1A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 4** (with reg. 1(1)(c))



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- C16** S. 17R applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 5\(8\)](#) (with reg. 1(1)(c))

## CHAPTER II

### ENFORCEMENT OF INSOLVENCY

#### *Enforcement orders*

#### **18 Orders for securing compliance with certain provisions.**

- (1) Subject to subsection (2) and sections 19 and 20 below, where in the case of any company holding an appointment under Chapter I of this Part [<sup>F239</sup>or [<sup>F240</sup>any person holding] a licence under Chapter 1A of this Part] the Secretary of State or the Director is satisfied—

- (a) that that company [<sup>F241</sup>or that person] is contravening—
- (i) any condition of the company's appointment [<sup>F242</sup>or [<sup>F243</sup>the person's] licence] in relation to which he is the enforcement authority; or
  - (ii) any statutory or other requirement which is enforceable under this section and in relation to which he is the enforcement authority;

or

- (b) that that company [<sup>F244</sup>or that person][<sup>F245</sup>is likely to contravene any such condition or requirement],

he shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

- [<sup>F246</sup>(1A) Subject to subsection (2) and sections 19 and 20 below, where—

- (a) in the case of any company holding an appointment under Chapter 1 of this Part, the Secretary of State or the Authority is satisfied that the company—

- (i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by [<sup>F247</sup>a person] holding a licence under Chapter 1A of this Part; or
- (ii) is likely to cause or contribute to any such contravention; or

- (b) in the case of [<sup>F248</sup>any person] holding a licence under Chapter 1A of this Part, the Secretary of State or the Authority is satisfied that [<sup>F249</sup>the person]—

- (i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding an appointment under Chapter 1 of this Part; or
- (ii) is likely to cause or contribute to any such contravention,

he or it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.]

- (2) Subject to section 19 below, where in the case of any company holding an appointment under Chapter I of this Part [<sup>F250</sup>or [<sup>F251</sup>any person holding] a licence under Chapter 1A of this Part]—

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- (a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) [<sup>F252</sup>or (1A)] above; and
  - (b) it appears to him that it is requisite that a provisional enforcement order be made,
- he may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to him requisite for the purpose of securing compliance with the condition or requirement in question.
- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional enforcement order be made, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other requirement enforceable under this section, is likely to be done, or omitted to be done, before a final enforcement order may be made.
- (4) Subject to sections 19 and 20 below, where the Secretary of State or the Director has made a provisional enforcement order, he shall confirm it, with or without modifications, if—
- (a) he is satisfied that the company to which the order relates—
    - (i) is contravening any condition or statutory or other requirement in relation to which he is the enforcement authority; or
    - [<sup>F253</sup>(ii) is likely to contravene any such condition or requirement;][<sup>F254</sup>or
    - (iii) is causing or contributing to a contravention of any such condition or requirement; or
    - (iv) is likely to cause or contribute to any such contravention;]
- and
- (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) An enforcement order—
- (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the enforcement authority who made it.
- (6) For the purposes of this section and the following provisions of this Act—
- (a) the statutory and other requirements which shall be enforceable under this section in relation to a company holding an appointment under Chapter I of this Part [<sup>F255</sup>or [<sup>F256</sup>a person holding] a licence under Chapter 1A of this Part] shall be such of the requirements of any enactment or of any subordinate legislation as—
    - (i) are imposed in consequence of that appointment [<sup>F257</sup>or licence]; and
    - (ii) are made so enforceable by that enactment or subordinate legislation;
  - (b) the Director shall be the enforcement authority in relation to the conditions of an appointment under Chapter I of this Part [<sup>F258</sup>or of a licence under Chapter 1A of this Part]; and
  - (c) the enforcement authority in relation to each of the statutory and other requirements enforceable under this section shall be the Secretary of State, the Director or either of them, according to whatever provision is made by

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the enactment or subordinate legislation by which the requirement is made so enforceable.

(7) In this section and the following provisions of this Chapter—

“enforcement order” means a final enforcement order or a provisional enforcement order;

“final enforcement order” means an order under this section other than a provisional enforcement order;

“provisional enforcement order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

[<sup>F259</sup>(8) Where any act or omission—

(a) constitutes a contravention of a condition of an appointment under Chapter 1 of this Part or of a condition of a licence under Chapter 1A of this Part or of a statutory or other requirement enforceable under this section; or

(b) causes or contributes to a contravention of any such condition or requirement, the only remedies for, or for causing or contributing to, that contravention (apart from those available by virtue of this section) shall be those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting, or causing or contributing to, such a contravention.]

#### Textual Amendments

**F239** Words in s. 18(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(2\)\(a\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. 2 para. 8](#))

**F240** Words in s. 18(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

**F241** Words in s. 18(1)(a) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

**F242** Words in s. 18(1)(a) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(2\)\(b\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. 2 para. 8](#))

**F243** Words in s. 18(1)(a)(i) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(c\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

**F244** Words in s. 18(1)(b) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(2\)\(d\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

**F245** Words in s. 18(1)(b) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 49(2)(a), 105(3); [S.I. 2004/2528](#), [art. 2\(f\)](#) (with [art. 4](#), [Sch.](#))

**F246** S. 18(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 4\(3\)](#); [S.I. 2005/2714](#), [art. 3\(c\)](#) (with [Sch. 2 para. 8](#))

**F247** Words in s. 18(1A)(a)(i) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(3\)\(a\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

**F248** Words in s. 18(1A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(3\)\(b\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

**F249** Words in s. 18(1A)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 26\(3\)\(c\)](#); [S.I. 2016/465](#), [art. 2\(m\)](#), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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- F250** Words in s. 18(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(4)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F251** Words in s. 18(2) inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 26(4)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F252** Words in s. 18(2)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(4)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F253** S. 18(4)(a)(ii) substituted (1.10.2004) by Water Act 2003 (c. 37), **ss. 49(2)(b)**, 105(3); S.I. 2004/2528, **art. 2(f)** (with savings in art. 4)
- F254** S. 18(4)(iii)(iv) and preceding word inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F255** Words in s. 18(6)(a) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(a)(i)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F256** Words in s. 18(6)(a) inserted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 26(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F257** Words in s. 18(6)(a)(i) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(a)(ii)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F258** Words in s. 18(6)(b) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(6)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)
- F259** S. 18(8) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 4(7)**; S.I. 2005/2714, **art. 3(c)** (with Sch. 2 para. 8)

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

- C17** S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 20(3)**, 225(2).
- C18** S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 197(6)**, 225(2).
- C19** S. 18 extended (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 203(5)**, 225(2).
- C20** S. 18: power to extend conferred (1.12.1991) by Water Resources Act 1991 (c. 57, SIF 130), **ss. 219(2)(a)**, 225(2).
- C21** S. 18 extended (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 4(2)**.
- C22** S. 18 extended (prosp.) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **ss. 52(3)**, 66
- C23** S. 18 extended (prosp.) by Consumers, Estate Agents and Redress Act 2007 (c. 17), **ss. 25(7)**, 66
- C24** S. 18 extended (20.4.2010) by The Water Supply (Water Quality) Regulations 2010 (S.I. 2010/994), regs. 1(1), **38** (with reg. 1(2)(3))
- C25** S. 18 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 6(1)** (with reg. 1(1)(c))
- C26** S. 18 applied (27.6.2016) by The Water Supply (Water Quality) Regulations 2016 (S.I. 2016/614), regs. 1(1), **38** (with reg. 1(2)(3))
- C27** S. 18 applied (3.10.2016) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), regs. 1(2), **27(3)**
- C28** S. 18 applied (3.10.2016) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), regs. 1(2), **30(4)**
- C29** S. 18 applied (3.10.2016) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), reg. 1(2), **Sch. 1 para. 3(7)**
- C30** S. 18 applied (3.10.2016) by The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/744), regs. 1(2), **9(6)**

## 19 Exceptions to duty to enforce.

- (1) <sup>[F260]</sup>Subject to the Drinking Water (Undertakings) (England and Wales) Regulations 2000]Neither the Secretary of State nor the Director shall be required to make

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an enforcement order in relation to any [<sup>F261</sup>person], or to confirm a provisional enforcement order so made, if he is satisfied—

- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
  - [<sup>F262</sup>(aa) that the extent to which the [<sup>F261</sup>person] caused or contributed to, or was likely to cause or contribute to, a contravention was trivial;]
  - (b) that the [<sup>F261</sup>person] has given, and is complying with, an undertaking to take all such steps as it appears to him for the time being to be appropriate for the [<sup>F261</sup>person] to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
  - (c) that the duties imposed on him by Part I of this Act preclude the making or, as the case may be, the confirmation of the order.
- [<sup>F263</sup>(1A) Before making an enforcement order or confirming a provisional enforcement order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (1B) The Authority shall not make an enforcement order or confirm a provisional enforcement order if it considers that it would be more appropriate to proceed under the Competition Act 1998.]
- (2) The requirement to comply with an undertaking given for the purposes of subsection (1)(b) above shall be treated as a statutory requirement enforceable under section 18 above—
- (a) by the Secretary of State; or
  - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (3) Where the Secretary of State or the Director, having notified a [<sup>F261</sup>person] that he is considering the making in relation to the [<sup>F261</sup>person] of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in paragraph (a), [<sup>F264</sup>(aa)],(b) or (c) of subsection (1) above [<sup>F265</sup>or, in the case of the Director, [<sup>F266</sup>has decided that it would be more appropriate to proceed under the Competition Act 1998] ], he shall—
- (a) serve notice that he is so satisfied [<sup>F267</sup>or has so decided] on the [<sup>F261</sup>person];
  - [<sup>F268</sup>(b) publish in such manner as the Secretary of State or the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them—
    - (i) a copy of the notice, and
    - (ii) where the Secretary of State or the Authority is satisfied as mentioned in paragraph (b) of subsection (1), a summary of the undertaking describing the steps to be taken under it; and]
    - (c) in a case where the Secretary of State is satisfied as mentioned in the said paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that paragraph on the Director.
- [<sup>F269</sup>(3A) In a case where notice under subsection (3)(a) falls to be served by the Welsh Ministers, references to the Secretary of State in subsection (3)(b) are to be read as references to the Welsh Ministers.]
- (4) The requirements of subsection (3) above shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 208 below, to the extent

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that the Secretary of State directs that they should not be complied with in the interests of national security.

#### Textual Amendments

- F260** Words in s. 19(1) inserted (14.6.2000) by S.I. 2000/1297, **art. 8**
- F261** Word in s. 19 substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 27**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F262** S. 19(1)(aa) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 5(2)**; S.I. 2005/2714, **art. 3(e)** (with **Sch. para. 8**)
- F263** S. 19(1A)(1B) substituted for s. 19(1A) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(2)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F264** Words in s. 19(3) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 5(3)**; S.I. 2005/2714, **art. 3(e)** (with **Sch. para. 8**)
- F265** Words in s. 19(3) inserted (1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(7)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**
- F266** Words in s. 19(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(3)(a)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F267** Words in s. 19(3)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 9(3)(b)**; S.I. 2014/416, **art. 2(1)(e)** (with **Sch.**)
- F268** S. 19(3)(b) substituted (20.4.2010) by The Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010 (S.I. 2010/996), regs. 1, **2(2)**
- F269** S. 19(3A) inserted (20.4.2010) by The Water Supply (Miscellaneous Amendments) (England and Wales) Regulations 2010 (S.I. 2010/996), regs. 1, **2(3)**

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

- C31** S. 19 applied (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 6(2)** (with reg. 1(1)(c))
- C32** S. 19(1)(b) restricted (14.6.2000) by S.I. 2000/1297, **art. 2**
- C33** S. 19(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by S.I. 1999/672, **art. 2, Sch. 1**

## 20 Procedure for enforcement orders.

- (1) Before making a final enforcement order [<sup>F270</sup>under section 18(1) above] or confirming a provisional enforcement order [<sup>F271</sup>in a case in which section 18(4)(a)(i) or (ii) above applies], the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out the effect of the order;
  - (b) setting out—
    - (i) the condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
    - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
    - (iii) the other facts which, in his opinion, justify the making or confirmation of the order;
- and
- (c) specifying the period (not being less than [<sup>F272</sup>twenty-one] days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

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and shall consider any representations or objections which are duly made and not withdrawn.

[<sup>F273</sup>(1A) Before making a final enforcement order under section 18(1A) above or confirming a provisional enforcement order in a case in which section 18(4)(a)(iii) or (iv) above applies, the Secretary of State or the Authority shall give notice—

- (a) stating that he or it proposes to make or confirm the order and setting out the effect of the order;
- (b) setting out—
  - (i) the condition or requirement for the purposes of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in his or its opinion, cause or contribute to or would cause or contribute to the contravention of that condition or requirement; and
  - (iii) the other facts which, in his or its opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.]

- (2) A notice under subsection (1) [<sup>F274</sup>or (1A)] above shall be given—
  - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the [<sup>F275</sup>person to whom] the order relates and, where the notice is given by the Secretary of State, on the Director.
- (3) Neither the Secretary of State nor the Director shall make a final enforcement order with modifications, or confirm a provisional enforcement order with modifications, except—
  - (a) with the consent to the modifications of the [<sup>F275</sup>person to whom] the order relates; or
  - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Secretary of State or, as the case may be, the Director shall—
  - (a) serve on the [<sup>F275</sup>person to whom] the order relates such notice as appears to him to be requisite of his proposal to make or confirm the order with modifications;
  - (b) in that notice specify the period (not being less than [<sup>F276</sup>twenty-one] days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making an enforcement order or confirming a provisional enforcement order, the Secretary of State or, as the case may be, the Director shall—

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- (a) serve a copy of the order on the [<sup>F275</sup>person to whom] the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on the Director; and
  - (b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.
- (6) Before revoking an enforcement order, other than an unconfirmed provisional order, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to revoke the order and setting out its effect; and
  - (b) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Secretary of State or the Director decides not to revoke the order to which the notice relates, he shall give notice of that decision.
- (8) A notice under subsection (6) or (7) above shall be given—
- (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice on the [<sup>F275</sup>person to whom] the order relates and, where the notice is given by the Secretary of State, on the Director.
- (9) The requirements of the preceding provisions of this section shall not apply, in the case of any order in respect of a contravention of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

#### Textual Amendments

- F270** Words in s. 20(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 6(2)(a)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F271** Words in s. 20(1) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 6(2)(b)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F272** Words in s. 20(1)(c) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 49(3)(4), 105(3); S.I. 2004/2528, **art. 2(f)**
- F273** S. 20(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 6(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F274** Words in s. 20(2) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 6(4)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F275** Words in s. 20 substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 28**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(j)** (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F276** Words in s. 20(4)(b) substituted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 49(3)(4), 105(3); S.I. 2004/2528, **art. 2(f)**

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

- C34** S. 20 applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(2)** (with reg. 1(1)(c))



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**C35** S. 20(9): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

## 21 Validity of enforcement orders.

- (1) If the [<sup>F277</sup>person to whom] an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—
  - (a) that its making or confirmation was not within the powers of section 18 above; or
  - (b) that any of the requirements of section 20 above have not been complied with in relation to it,the [<sup>F278</sup>person] may, within forty-two days from the date of service on it of a copy of the order, make an application to the High Court under this section.
- (2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the [<sup>F279</sup>person] have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of an enforcement order shall not be questioned in any legal proceedings whatsoever.

### Textual Amendments

- F277** Words in s. 21(1) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 29(2)(a); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F278** Word in s. 21(1) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 29(2)(b); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F279** Word in s. 21(2) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), Sch. 7 para. 29(3); S.I. 2016/465, art. 2(m), Sch. 1 para. 1(j) (with Sch. 2) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

## 22 Effect of enforcement order.

- (1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.
- (2) Where a duty is owed by virtue of subsection (1) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.
- (3) In any proceedings brought against any [<sup>F280</sup>person] in pursuance of subsection (2) above, other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of section 68(1)(a) [<sup>F281</sup>or (1A) (a)] below, it shall be a defence for the [<sup>F280</sup>person] to show that [<sup>F282</sup>the person] took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (4) Without prejudice to any right which any person may have by virtue of subsection (1) above to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings by the relevant enforcement authority for an injunction or for any other appropriate relief.

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- (5) In subsection (4) above “the relevant enforcement authority”, in relation to any enforcement order, means the Secretary of State or the Director or either of them according to who is the enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

#### Textual Amendments

- F280** Word in s. 22(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 30(a)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F281** Words in s. 22(3) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 7**; S.I. 2005/2714, **art. 3(c)** (with **Sch. para. 8**)
- F282** Words in s. 22(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 30(b)**; S.I. 2016/465, art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

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

- C36** S. 22 applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(2)** (with reg. 1(1)(c))

### [<sup>F283</sup>Financial penalties

#### Textual Amendments

- F283** Ss. 22A-22F and preceding cross-heading inserted (1.10.2004 for specified purposes and otherwise 1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 48(1), 105(3); S.I. 2004/2528, **art. 2(e)** (with savings in art. 4); S.I. 2005/968, **art. 2(i)** (with savings in art. 4, **Sch. 1, 2**)

## 22A Penalties

- (1) Where the Authority is satisfied—
- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
    - (i) has contravened or is contravening any condition of the appointment;
    - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a [<sup>F284</sup>person] holding a licence under Chapter 1A of this Part of any condition of the licence; or
    - (iii) has failed or is failing to achieve any standard of performance prescribed under section 38(2) or 95(2) below; or
  - (b) in the case of any [<sup>F285</sup>person] holding a licence under Chapter 1A of this Part, that the [<sup>F285</sup>person]—
    - (i) has contravened or is contravening any condition of the licence; <sup>F286</sup>...
    - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment, [<sup>F287</sup>or
    - (iii) has failed or is failing to achieve any standard of performance prescribed under section 38ZA or 95ZA,]

the Authority may, subject to section 22C below, impose on [<sup>F288</sup>that company or that person] a penalty of such amount as is reasonable in all the circumstances of the case.

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- (2) Where the Authority, the Secretary of State or the Assembly is satisfied—
- (a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—
    - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
    - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a [<sup>F289</sup>person] holding a licence under Chapter 1A of this Part of any such requirement; or
  - (b) in the case of any [<sup>F290</sup>person] holding a licence under Chapter 1A of this Part, that the [<sup>F290</sup>person]—
    - (i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or
    - (ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any such requirement,he or it may, subject to section 22C below, impose on [<sup>F291</sup>that company or that person] a penalty of such amount as is reasonable in all the circumstances of the case.
- (3) In a case in which—
- (a) subsection (1) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection, or
  - (b) subsection (2) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection,
- references in the following provisions of this section and sections 22B and 22C below to a contravention include references to causing or contributing to a contravention.
- (4) Before imposing a penalty on a [<sup>F292</sup>person] under subsection (1) or (2) above the Authority, the Secretary of State or the Assembly (the “enforcement authority”) shall give notice—
- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
  - (b) setting out the condition, requirement or standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and
  - (d) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) Before varying any proposal stated in a notice under subsection (4)(a) above the enforcement authority shall give notice—
- (a) setting out the proposed variation and the reasons for it; and
  - (b) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

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- and shall consider any representations or objections which are duly made and not withdrawn.
- (6) As soon as practicable after imposing a penalty [<sup>F293</sup>on a person], the enforcement authority shall give notice—
- (a) stating that he or it has imposed a penalty on the [<sup>F294</sup>person] and its amount;
  - (b) setting out the condition, requirement or standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and
  - (d) specifying a date, no earlier than the end of the period of forty-two days from the date of service of the notice on the [<sup>F295</sup>person], by which the penalty is required to be paid.
- (7) The [<sup>F296</sup>person on whom the penalty has been imposed] may, within twenty-one days of the date of service <sup>F297</sup>... of a notice under subsection (6) above, make an application to the enforcement authority for him or it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this section shall be given—
- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
  - (b) by serving a copy of the notice on the [<sup>F298</sup>person on whom the penalty is to be or has been imposed];
  - (c) by serving a copy of the notice on the Council; and
  - (d) where the notice is given by the Secretary of State or the Assembly, by serving a copy of the notice on the Authority.
- (9) Any sums received by the enforcement authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (10) The power of the enforcement authority to impose a penalty under this section is not exercisable in respect of any contravention or failure before the commencement of this section.
- (11) No penalty imposed by an enforcement authority under this section may exceed<sup>F299</sup>—
- (a) 10% of the turnover of the company, or
  - (b) in a case where the person on whom the penalty is imposed is not a company, 10% of the turnover of the business of the person,
- (determined] in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).
- (12) The power of the Secretary of State to make an order under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- <sup>F300</sup>(13) Before imposing a penalty under this section, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (14) The Authority shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.]

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### Textual Amendments

- F284** Word in s. 22A(1)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(2\)\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F285** Word in s. 22A(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(2\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F286** Word in s. 22A(1)(b)(i) omitted (31.3.2017) by virtue of [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\), arts. 1\(1\), 6\(3\)\(a\)](#)
- F287** [S. 22A\(1\)\(b\)\(iii\)](#) and word inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\), arts. 1\(1\), 6\(3\)\(b\)](#)
- F288** Words in s. 22A(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(2\)\(c\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F289** Word in s. 22A(2)(a)(ii) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(3\)\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F290** Word in s. 22A(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(3\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F291** Words in s. 22A(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(3\)\(c\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F292** Word in s. 22A(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(4\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F293** Words in s. 22A(6) inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(5\)\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F294** Word in s. 22A(6)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(5\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F295** Word in s. 22A(6)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(5\)\(c\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F296** Words in s. 22A(7) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(6\)\(a\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F297** Words in s. 22A(7) repealed (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(6\)\(b\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F298** Words in s. 22A(8)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(7\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F299** Words in s. 22A(11) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 31\(8\)](#); [S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F300** [S. 22A\(13\)\(14\)](#) substituted for [s. 22A\(13\)](#) (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 14 para. 10](#); [S.I. 2014/416, art. 2\(1\)\(e\)](#) (with [Sch.](#))

### Modifications etc. (not altering text)

- C37** [S. 22A](#) applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 6\(3\)](#) (with [reg. 1\(1\)\(c\)](#))

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## 22B Statement of policy with respect to penalties

- (1) Each enforcement authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure an enforcement authority shall have regard to his or its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) An enforcement authority may revise his or its statement of policy and where he or it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) An enforcement authority shall undertake such consultation as he or it considers appropriate when preparing or revising his or its statement of policy.

### Modifications etc. (not altering text)

**C38** S. 22B applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(4)** (with reg. 1(1)(c))

## 22C Time limits on the imposition of financial penalties

- (1) Where no final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty [<sup>F301</sup>on a person] in respect of the contravention or failure later than the end of the period of [<sup>F302</sup>five years] from the time of the contravention or failure, unless before the end of that period—
  - (a) the notice under section 22A(4) above relating to the penalty is served on the [<sup>F303</sup>person] under section 22A(8) above; or
  - (b) a notice relating to the contravention or failure is served on the [<sup>F304</sup>person] under section 203(2) below.
- (2) Where a final or provisional order has been made in relation to a contravention or failure, an enforcement authority may not impose a penalty [<sup>F305</sup>on a person] in respect of the contravention or failure unless the notice relating to the penalty under section 22A(4) above was served on the [<sup>F306</sup>person] under section 22A(8) above—
  - (a) within three months from the confirmation of the provisional order or the making of the final order; or
  - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

### Textual Amendments

**F301** Words in s. 22C(1) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 32(2)(a)**; [S.I. 2016/465](#), art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

**F302** Words in s. 22C(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 26(1)**, 94(2)(g) (with s. 26(2))

*Status: Point in time view as at 18/07/2023.*

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- F303** Word in s. 22C(1)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 32\(2\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F304** Words in s. 22C(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 32\(2\)\(c\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F305** Words in s. 22C(2) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 32\(3\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F306** Word in s. 22C(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 32\(3\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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

- C39** S. 22C applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 6\(4\)](#) (with reg. 1(1)(c))

**22D Interest and payment of instalments**

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under subsection (7) of section 22A above in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the enforcement authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the enforcement authority under that subsection, the enforcement authority may where he or it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

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

- C40** S. 22D applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 6\(4\)](#) (with reg. 1(1)(c))

**22E Appeals**

- (1) If the [<sup>F307</sup>person on whom] a penalty is imposed is aggrieved by—
  - (a) the imposition of the penalty;
  - (b) the amount of the penalty; or
  - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,the company may make an application to the court under this section.
- (2) An application under subsection (1) above must be made—
  - (a) within forty-two days from the date of service on the [<sup>F308</sup>person] of a notice under section 22A(6) above; or
  - (b) where the application relates to a decision of an enforcement authority on an application by the [<sup>F309</sup>person] under section 22A(7) above, within forty-two days from the date the [<sup>F309</sup>person] is notified of the decision.

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- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4) below, the court—
- (a) may quash the penalty;
  - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
  - (c) in the case of an application under subsection (1)(c) above, may substitute for the date or dates imposed by the enforcement authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
- (a) that the imposition of the penalty was not within the power of the enforcement authority under section 22A above;
  - (b) that any of the requirements of subsections (4) to (6) or (8) of section 22A above have not been complied with in relation to the imposition of the penalty and the interests of the [F310 person] have been substantially prejudiced by the non-compliance; or
  - (c) that it was unreasonable of the enforcement authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.
- (9) In this section “the court” means the High Court.

#### Textual Amendments

- F307** Words in s. 22E(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(2\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F308** Word in s. 22E(2)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F309** Word in s. 22E(2)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F310** Word in s. 22E(4)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 33\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(j\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)



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

- C41** S. 22E applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(4)** (with reg. 1(1)(c))

### **22F Recovery of penalties**

Where a penalty imposed under section 22A(1) or (2) above, or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 22E above during the period within which such an application can be made; or
- (b) an application has been made under that section and determined, the enforcement authority may recover from the [<sup>F311</sup>person], as a civil debt due to him or it, any of the penalty and any interest which has not been paid.]

#### **Textual Amendments**

- F311** Word in s. 22F substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 34**; [S.I. 2016/465](#), art. 2(m), **Sch. 1 para. 1(j)** (with **Sch. 2**) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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

- C42** S. 22F applied (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 6(4)** (with reg. 1(1)(c))

### *Special administration orders*

### **23 Meaning and effect of special administration order.**

- (1) A special administration order is an order of the High Court made in accordance with section 24 or 25 below in relation to a company holding an appointment under Chapter I of this Part [<sup>F312</sup>or which is [<sup>F313</sup>a qualifying licensed water supplier][<sup>F313</sup>a qualifying water supply licensee or a qualifying sewerage licensee]] and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court—
  - (a) for the achievement of the purposes of such an order; and
  - (b) in a manner which protects the respective interests of the members and creditors of the company.
- (2) The purposes of a special administration order made in relation to any company [<sup>F314</sup>holding an appointment under Chapter 1 of this Part] shall be—
  - (a) the transfer to another company, or (as respects different parts of the area to which the company's appointment relates, or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and
  - (b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation which replaces the former company as a relevant undertaker).

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F315</sup>(2A) The purposes of a special administration order made in relation to any company which is [<sup>F316</sup>a qualifying water supply licensee] shall be—
- (a) the transfer to another company or companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that activities relating to the introduction or introductions of water mentioned in [<sup>F317</sup>subsection (7)] below may be properly carried on; and
  - (b) the carrying on of those activities pending the making of the transfer.]
- [<sup>F318</sup>(2B) Where a company is in special administration as a result of an order made on the grounds that the company is or is likely to be unable to pay its debts—
- (a) a purpose of the special administration order is to rescue the company as a going concern, and
  - (b) the transfer purpose under subsection (2)(a) or (2A)(a) applies only if the special administrator thinks that—
    - (i) it is not likely to be possible to rescue the company as a going concern, or
    - (ii) transfer is likely to secure more effective performance of the functions or activities mentioned in subsection (2)(a) or (2A)(a).
- (2C) Where subsection (2B) applies, subsections (2)(b) and (2A)(b) have effect as if they referred to carrying out functions, or carrying on activities, pending rescue or transfer.
- (2D) For the purpose of rescuing the company as a going concern a special administrator may propose—
- (a) a company voluntary arrangement under Part 1 of the Insolvency Act 1986, or
  - (b) a compromise or arrangement in accordance with Part 26 [<sup>F319</sup>or 26A] of the Companies Act 2006.
- (2E) The Secretary of State may by regulations made by statutory instrument—
- (a) modify a provision of the Insolvency Act 1986 or the Companies Act 2006 in respect of the arrangements and compromises mentioned in subsection (2D) in so far as they apply to a company which is or has been in special administration;
  - (b) make other supplemental provision about those arrangements and compromises (which may, in particular, apply or modify the effect of an enactment about insolvency or companies).
- (2F) Provision under subsection (2E)(a) or (b) may, in particular, confer a function on—
- (a) the Secretary of State,
  - (b) the Welsh Ministers, or
  - (c) the Authority.
- (2G) Regulations under subsection (2E) may not be made unless—
- (a) the Welsh Ministers have consented to the making of the regulations, and
  - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]
- [<sup>F320</sup>(2H) A transfer under subsection (2) or (2A) may be effected by—
- (a) transferring all or part of the company's undertaking to a wholly-owned subsidiary of the company, and
  - (b) then transferring securities in the subsidiary to another company.]

*Status: Point in time view as at 18/07/2023.*

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- [<sup>F321</sup>(3) Schedule B1 to the Insolvency Act 1986 (administration) applies to special administration (subject to regulations under subsection (3A)).
- (3A) The Secretary of State may make regulations about special administration which—
- (a) apply (with or without modification) an insolvency provision;
  - (b) disapply an insolvency provision;
  - (c) modify the effect of an insolvency provision;
  - (d) make provision similar to, and in place of, an insolvency provision.
- (3B) In subsection (3A) “insolvency provision” means a provision of the Insolvency Act 1986 or another enactment about insolvency (including (i) a provision about administration, (ii) a provision about consequences of insolvency, and (iii) a provision conferring power to make rules).
- (3C) A reference in an enactment to Part II of the Insolvency Act 1986 includes a reference to that Part as applied by or under this section (subject to regulations under subsection (3A)).
- (3D) Regulations under subsection (3A) shall be made by statutory instrument and may not be made unless—
- (a) the Welsh Ministers have consented to the making of the regulations, and
  - (b) a draft has been laid before and approved by resolution of each House of Parliament (and section 213(1) shall not apply).]

(4) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which

    - [<sup>F322</sup>(a) a company is replaced by another as a relevant undertaker without an appointment or variation under Chapter 1 of this Part; or
    - (b) [<sup>F323</sup>a company carries on activities relating to—
      - (i) the introduction or introductions of water mentioned in subsection (7) formerly carried on by another company; or
      - (ii) the removal or removals of matter mentioned in subsection (9) formerly carried on by another company,]

in pursuance of a special administration order.]

(5) In this section “business” and “property” have the same meanings as in the <sup>M1</sup>Insolvency Act 1986.

[<sup>F324</sup>(6) For the purposes of this section, sections 24 to 26 below and Schedule 2 to this Act, a [<sup>F325</sup>water supply licensee] is a [<sup>F326</sup>qualifying water supply licensee] if—

    - [<sup>F327</sup>(a) it is the holder of a water supply licence giving it a wholesale or supplementary authorisation (within the meaning of Chapter 1A of this Part), and
    - (b) the condition in subsection (7) is satisfied in relation to it.]

[ The condition in this subsection is that—

<sup>F328</sup>(7) (a) the introduction of water by the licence holder which is permitted under section 66B or 66C is designated as a strategic supply under section 66G, or

    - (b) the introductions of water by the licence holder which are permitted under section 66B or 66C are designated as a collective strategic supply under section 66H.]]

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F312** Words in s. 23(1) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(2)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F313** Words in s. 23(1) substituted (1.4.2017 for specified purposes) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(2)**; S.I. 2017/462, art. 3(k)(bb)(v)
- F314** Words in s. 23(2) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F315** S. 23(2A) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(3)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F316** Words in s. 23(2A) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(3)(a)**; S.I. 2017/462, art. 3(k)(cc)(v)
- F317** Words in s. 23(2A) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(3)(b)**; S.I. 2017/462, art. 3(k)(cc)(v)
- F318** S. 23(2B)-(2G) inserted (1.10.2010 for specified purposes, 12.1.2024 in so far as not already in force) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 3** (with s. 49(1)(6)); S.I. 2010/2169, art. 4; S.I. 2024/35, art. 2(b)
- F319** Words in s. 23(2D)(b) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 11** (with ss. 2(2), 5(2))
- F320** S. 23(2H) inserted (1.10.2010 for specified purposes, 12.1.2024 in so far as not already in force) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 5(1)** (with s. 49(1)(6), Sch. 5 para. 5(4)); S.I. 2010/2169, art. 4; S.I. 2024/35, art. 2(b)
- F321** S. 23(3)-(3D) substituted for s. 23(3) (1.10.2010 for specified purposes) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 5 para. 6(1)** (with s. 49(1)(6)); S.I. 2010/2169, art. 4, Sch.
- F322** Words in s. 23(4) substituted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(5)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F323** S. 23(4)(b) substituted (1.4.2017 so far as it substitutes s. 23(4)(b)(i), otherwise prosp.) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(7)**; S.I. 2017/462, art. 3(k)(dd)(v)
- F324** S. 23(6) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 8(6)**; S.I. 2005/2714, **art. 3(c)** (with Sch. para. 8)
- F325** Words in s. 23(6) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(8)(a)**; S.I. 2017/462, art. 3(k)(ee)(v)
- F326** Words in s. 23(6) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(8)(b)**; S.I. 2017/462, art. 3(k)(ee)(v)
- F327** S. 23(6)(a)(b) substituted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(8)(c)**; S.I. 2017/462, art. 3(k)(ee)(v)
- F328** S. 23(7) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 35(9)**; S.I. 2017/462, art. 3(k)(ee)(v)

### Modifications etc. (not altering text)

- C43** S. 23 applied (with modifications) (28.6.2013) by The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (S.I. 2013/1582), reg. 1(1)(b), **Sch. 1 para. 7(2)** (with reg. 1(1)(c))
- C44** S. 23(1) restricted (15.11.1999) by S.I. 1999/2787, **art. 4**

### Marginal Citations

- M1** 1986 c. 45.

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 24 Special administration orders made on special petitions.

(1) If, on an application made to the High Court by petition presented—

- (a) by the Secretary of State; or
- (b) with the consent of the Secretary of State, by the Director,

that Court is satisfied in relation to any company which holds an appointment under Chapter I of this Part that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.

[<sup>F329</sup>(1A) If on an application made to the High Court by petition presented—

- (a) by the Secretary of State [<sup>F330</sup>(after consulting the Assembly)]; or
- (b) with the consent of the Secretary of State [<sup>F331</sup>(after consulting the Assembly)], the Authority,

the Court is satisfied in relation to any company which is a [<sup>F332</sup>qualifying licensed water supplier][<sup>F332</sup>qualifying water supply licensee or qualifying sewerage licensee] that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.]

[<sup>F333</sup>(1B) Before presenting a petition under subsection (1A) in relation to a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Secretary of State or the Authority (as the case may be) must consult the Welsh Ministers.]

(2) The grounds mentioned in [<sup>F334</sup>subsections (1) and (1A)] above are, in relation to any company—

- (a) that there has been, is or is likely to be such a contravention by the company of any principal duty, not being a contravention in respect of which a notice has been served under subsection (3) of section 19 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment [<sup>F335</sup>or licence];
- (b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—

(i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) above; and

(ii) if it is a provisional enforcement order, has been confirmed,

as is serious enough to make it inappropriate for the company to continue to hold its appointment [<sup>F335</sup>or licence];

[<sup>F336</sup>(bb) in the case of a company which is a [<sup>F337</sup>qualifying licensed water supplier][<sup>F337</sup>qualifying water supply licensee] , that—

(i) action taken by the company has caused a contravention by a water undertaker of any principal duty; and

(ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;]

[<sup>F338</sup>(bc) in the case of a company which is a qualifying sewerage licensee, that—

(i) action taken by the company has caused a contravention by a sewerage undertaker of any principal duty; and

(ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;]

- (c) that the company is or is likely to be unable to pay its debts;

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*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 25 below, for him to petition for the winding up of the company under [F339]section 440 of the Companies Act 1985[[F339]section 124A of the Insolvency Act 1986] (petition by the Secretary of State following inspectors' report etc.), it would be just and equitable, as mentioned in that section, for the company to be wound up if it did not hold an appointment under Chapter I of this Part or was not a [F340]qualifying licensed water supplier[[F340]qualifying water supply licensee or a qualifying sewerage licensee ] ; or
- (e) [F341]in the case of a company holding an appointment under Chapter 1 of this Part,] that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or the Director to be necessary by reason of, or in connection with, a proposal for the making by virtue of section 7(4)(c) above of any appointment or variation replacing a company as a relevant undertaker.
- (3) Notice of any petition under this section for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the M2Insolvency Act 1986 (“the 1986 Act”); and no such petition shall be withdrawn except with the leave of the High Court.
- [F342](4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a special administration order in relation to any company as they apply on the hearing of a petition for an administration order.]
- [F342](5) Subsections (1), (2) and (4) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a special administration order in relation to any company as if—
- (a) the reference in subsection (1) to an administration order were a reference to a special administration order;
  - (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and
  - (c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 18 above.]
- (6) For the purposes of this section a company is unable to pay its debts if—
- (a) it is a limited company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
  - (b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).
- [F343](7) In this section “principal duty” means—
- (a) in relation to a company holding an appointment under Chapter 1 of this Part, a requirement imposed on the company by section 37 or 94 below;
  - (b) in relation to a company which is a [F344]qualifying licensed water supplier[[F344]qualifying water supply licensee or a qualifying sewerage licensee] , any condition of its licence or any statutory requirement imposed on it in consequence of its licence.]

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

- F329** S. 24(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(2\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F330** Words in s. 24(1A)(a) repealed (1.4.2017 except as it relates to qualifying sewerage licensees) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 36\(2\)\(a\)](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)
- F331** Words in s. 24(1A)(b) repealed (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 36\(2\)\(a\)](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)
- F332** Words in s. 24(1A) substituted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 36\(2\)\(c\)](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)
- F333** S. 24(1B) inserted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 36\(3\)](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)
- F334** Words in s. 24(2) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(a\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F335** Words in s. 24(2)(a)(b) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(b\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F336** S. 24(2)(bb) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(c\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F337** Words in s. 24(2)(bb) substituted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 36\(4\)\(a\)](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)
- F338** S. 24(2)(bc) inserted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 36\(4\)\(b\)](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)
- F339** Words in s. 24(2)(d) substituted (1.10.2010 for specified purposes) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 5 para. 6\(4\)](#) (with s. 49(1)(6)); S.I. 2010/2169, [art. 4](#), [Sch.](#)
- F340** Words in s. 24(2)(d) substituted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 36\(4\)\(c\)](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)
- F341** Words in s. 24(2)(e) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(3\)\(e\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F342** S. 24(4)(5) ceases to have effect (1.10.2010 for specified purposes) by virtue of [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), [Sch. 5 para. 6\(2\)](#) (with s. 49(1)(6)); S.I. 2010/2169, [art. 4](#), [Sch.](#)
- F343** S. 24(7) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 9\(4\)](#); S.I. 2005/2714, [art. 3\(c\)](#) (with [Sch. para. 8](#))
- F344** Words in s. 24(7)(b) substituted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 36\(5\)](#); S.I. 2017/462, [art. 3\(k\)\(vi\)](#)

### Modifications etc. (not altering text)

- C45** S. 24 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 7\(3\)](#) (with reg. 1(1)(c))
- C46** S. 24(1) excluded (5.9.2017) by [The London Overground \(Barking Riverside Extension\) Order 2017 \(S.I. 2017/830\)](#), arts. 1, [15\(1\)](#) (with [Sch. 8 para. 20](#))

### Marginal Citations

- M2** 1986 c. 45.

## 25 Power to make special administration order on winding-up petition.

On an application made to any court for the winding up of a company which holds an appointment under Chapter I of this Part or is a <sup>F345</sup>qualifying licensed water supplier <sup>F345</sup>qualifying water supply licensee or a qualifying sewerage licensee] —

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- (a) the court shall not make a winding-up order in relation to the company; but
- (b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment or a [F345 qualifying licensed water supplier][F345 qualifying water supply licensee or a qualifying sewerage licensee] , it shall, instead, make a special administration order in relation to the company.

#### Textual Amendments

**F345** Words in s. 25 substituted (1.4.2017 for specified purposes) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 37](#); S.I. 2017/462, art. 3(k)(vi)

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

**C47** S. 25 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 7\(5\)](#) (with reg. 1(1)(c))

### *Restrictions on voluntary winding up and insolvency proceedings*

## 26 Restrictions on voluntary winding up and insolvency proceedings.

- (1) Where a company holds an appointment under Chapter I of this Part or is a [F346[F347 qualifying licensed water supplier][F346 qualifying water supply licensee or a qualifying sewerage licensee] —
  - (a) the company shall not be wound up voluntarily;
  - (b) no administration order shall be made in relation to the company under Part II of the <sup>M3</sup>Insolvency Act 1986; and
  - (c) no step shall be taken by any person to enforce any security over the company’s property except where that person has served fourteen days’ notice of his intention to take that step on the Secretary of State and on the Director.
- (2) In this section “security” and “property” have the same meanings as in Parts I to VII of the <sup>M4</sup>Insolvency Act 1986.

#### Textual Amendments

**F346** Words in s. 26(1) substituted (1.4.2017 except as it relates to qualifying sewerage licensees) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 38](#); S.I. 2017/462, art. 3(k)(vi)

**F347** Words in s. 26 inserted (1.12.2005) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 8 para. 11](#); S.I. 2005/2714, art. 3(c) (with Sch. para. 8)

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

**C48** S. 26 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\), reg. 1\(1\)\(b\), Sch. 1 para. 7\(6\)](#) (with reg. 1(1)(c))

#### Marginal Citations

**M3** 1986 c. 45.

**M4** 1986 c. 45.



*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER III

### PROTECTION OF CUSTOMERS ETC..

#### *General provisions*

#### **27 General duty of Director to keep matters under review.**

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so, to keep under review the carrying on both in England and Wales and elsewhere of activities connected with the matters in relation to which
  - <sup>F348</sup>(a) water undertakers or sewerage undertakers carry out functions; and
  - (b) [<sup>F349</sup>water supply licensees or sewerage licensees] carry on activities authorised by their licences.]
- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time to do so, to collect information with respect to—
  - (a) the carrying out by companies appointed under Chapter I of this Part of the functions of relevant undertakers; or
  - <sup>F350</sup>(aa) the carrying on by [<sup>F351</sup>persons] holding licences under Chapter 1A of this Part of the activities authorised by their licences; or]
  - (b) any [<sup>F352</sup>company mentioned in paragraph (a) or (aa) above] ,  
with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on him by or under any enactment.
- (3) The Secretary of State may give general directions indicating—
  - (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1) or (2) above; and
  - (b) considerations to which, in cases where it appears to the Director that any of his powers under Parts II to V and VII of this Act are exercisable, he should have particular regard in determining whether to exercise those powers;and it shall be the duty of the Director to comply with any such directions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or [<sup>F353</sup>the CMA] to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter relating to—
  - (a) the functions of either description of relevant undertaker; or
  - (b) the carrying out of any such functions by a company holding an appointment under Chapter I of this Part [<sup>F354</sup> or
  - (c) the activities authorised by [<sup>F355</sup>the authorisations or combinations of authorisations given by licences under Chapter 1A of this Part (see sections 17A and 17BA)]; or
  - (d) the carrying on of any such activities by a [<sup>F356</sup>person] holding any such licence.]

*Status: Point in time view as at 18/07/2023.*

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### Textual Amendments

- F348** S. 27(1)(a)(b) substituted (1.12.2005) for words by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(2\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F349** Words in s. 27(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 39\(2\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F350** S. 27(2)(aa) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(3\)\(a\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F351** Word in s. 27(2)(aa) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 39\(3\)\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F352** Words in s. 27(2)(b) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(3\)\(b\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F353** Words in s. 27(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 81](#) (with [art. 3](#))
- F354** S. 27(4)(c)(d) and preceding word inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(4\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F355** Words in s. 27(4)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 39\(4\)\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F356** Word in s. 27(4)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 39\(4\)\(b\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

### Modifications etc. (not altering text)

- C49** S. 27 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), [Sch. 1 para. 8](#) (with [reg. 1\(1\)\(c\)](#)) (as amended (10.1.2015) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) \(Amendment\) Regulations 2015 \(S.I. 2015/22\)](#), [regs. 1\(1\), 5](#))
- C50** S. 27(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by [S.I. 1999/672, art. 2, Sch. 1](#)

### [<sup>F357</sup>27Z] Power to require information for purpose of monitoring

- (1) The Authority may, for the purpose of performing its duty under section 27(1) or (2), serve a notice under subsection (2) on—
  - (a) a water undertaker or sewerage undertaker;
  - (b) a water supply licensee or sewerage licensee.
- (2) A notice under this subsection is a notice which requires the person on whom it is served—
  - (a) to produce to the Authority, at a time and place specified in the notice (which must be reasonable), any documents specified or described in the notice which are in that person's custody or under that person's control, or
  - (b) to provide to the Authority, at a time and place and in the form and manner specified in the notice (which must be reasonable), information specified or described in the notice.
- (3) The requirements imposed by a notice under subsection (2) are enforceable by the Authority under section 18.

*Status: Point in time view as at 18/07/2023.*

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- (4) Nothing in this section requires a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duty imposed by this section).
- (5) In subsection (4) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).]

#### Textual Amendments

**F357** S. 27ZA inserted (10.5.2022 for specified purposes) by [Environment Act 2021 \(c. 30\)](#), **ss. 85**, 147(3)(4) (with s. 144); S.I. 2022/518, regs. 1(2), 2(e)

<sup>F358</sup>*The Consumer Council for Water*

#### Textual Amendments

**F358** Ss. 27A, 27B and preceding cross-heading inserted (1.8.2005 for specified provisions and purposes and 1.10.2005 for further specified provisions and purposes and 1.4.2006 otherwise) by [Water Act 2003 \(c. 37\)](#), **ss. 35(1)**, 105(3); S.I. 2005/968, **art. 3(a)**; S.I. 2005/2714, **arts. 2(a)**, **4(b)** (with Sch. para. 8)

### 27A Establishment of the Council and committees

- (1) There shall be a body corporate to be known as the Consumer Council for Water (in this Act referred to as “the Council”) for the purpose of carrying out the functions of the Council under this Act.
- (2) In Welsh the Council may be known as “Cyngor Defnyddwyr Dŵr”.
- (3) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (4) The Council shall establish such committees of the Council—
  - (a) as the Assembly may direct, for relevant undertakers whose areas are wholly or mainly in Wales; and
  - (b) as the Secretary of State may direct, for other relevant undertakers.
- (5) A direction under subsection (4) above may provide for the allocation of each relevant undertaker to a committee specified in the direction.
- (6) The power to give a direction under subsection (4) above may not be exercised after the end of the period of six months beginning with the commencement of section 35 of the Water Act 2003.
- (7) After the end of the period mentioned in subsection (6) above the Council may (subject to paragraph 11 of Schedule 3A to this Act)—
  - (a) establish such committees for relevant undertakers as it considers appropriate; or
  - (b) alter the allocation of a relevant undertaker to a committee established under this section.

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- (8) The Council shall ensure that each relevant undertaker is allocated to a committee established under this section.
- (9) A committee established under this section is referred to in this Act as a “regional committee”.
- (10) The purposes of a regional committee shall be—
- (a) the provision of advice and information to the Council on consumer matters affecting the areas of the relevant undertakers allocated to that committee;
  - (b) such other purposes as the Council may determine.
- (11) The provisions of Schedule 3A to this Act (which makes further provision about the Council and regional committees) shall have effect.
- (12) The Council shall exercise and perform its powers and duties in the manner which it considers is best calculated to contribute to the achievement of sustainable development.
- (13) In this Chapter—
- “consumers” includes both existing and future consumers;
- “the interests of consumers” means the interests of consumers in relation to—
- (a) the supply of water by means of a water undertaker’s supply system to premises either by water undertakers or by [<sup>F359</sup>water supply licensees] acting in their capacity as such; and
  - (b) the provision of sewerage services [<sup>F360</sup>either by sewerage undertakers or by sewerage licensees acting in their capacity as such]; and
- “consumer matter” means any matter connected with the interests of consumers.

#### **Textual Amendments**

- F359** Words in s. 27A(13) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 40\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F360** Words in s. 27A(13) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 40\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

## **27B Co-operation between Council and other authorities**

- (1) This section imposes duties on—
- (a) the Authority and the Council;
  - (b) the Council and the Secretary of State; and
  - (c) the Council and the Assembly.
- (2) It shall be the duty of the bodies mentioned in each paragraph of subsection (1) above to make arrangements with a view to securing—
- (a) co-operation and the exchange of information between them; and
  - (b) the consistent treatment of matters which affect both of them.
- (3) As soon as practicable after agreement is reached on any arrangements required by this section, the parties shall prepare a memorandum setting them out.

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- (4) Arrangements under this section shall be kept under review by the parties.
- (5) As soon as practicable after agreement is reached on any changes to arrangements under this section, the parties shall revise their memorandum.
- (6) Parties to arrangements required by this section shall send a copy of their memorandum, and any revised memorandum, to each other person mentioned in subsection (1) above who is not a party to the arrangements set out in the memorandum (or revised memorandum).
- (7) The Secretary of State shall lay a copy of every memorandum or revised memorandum under this section before each House of Parliament.]

### *[<sup>F361</sup>General functions of the Council*

#### Textual Amendments

**F361** Ss. 27C-27G and preceding cross-heading inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 43(1), 105(3)**; [S.I. 2005/2714](#), **art. 2(c)** (with [Sch. 2 para. 8](#))

## 27C The interests of consumers

- (1) In considering the interests of consumers, the Council shall have regard to the interests of—
  - (a) individuals who are disabled or chronically sick;
  - (b) individuals of pensionable age;
  - (c) individuals with low incomes;
  - (d) individuals residing in rural areas; <sup>F362</sup> ...
  - (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are [<sup>F363</sup>household premises (as defined in section 17C)]<sup>F364</sup> and
  - (f) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are below the consumption threshold and in the area of a relevant undertaker whose area is wholly or mainly in Wales,]but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.
- (2) For the purposes of subsection (1) above, premises are [<sup>F365</sup>below the consumption threshold if the total quantity] of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection.

#### Textual Amendments

**F362** Word in s. 27C(1) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 41(2)(a)**; [S.I. 2016/465](#), **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

**F363** Words in s. 27C(1)(e) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 41(2)(b)**; [S.I. 2016/465](#), **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

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- F364** S. 27C(1)(f) and word inserted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 41\(2\)\(c\); S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(k\) \(with Sch. 2\) \(as amended \(22.3.2017\) by S.I. 2017/462, art. 16\)](#)
- F365** Words in s. 27C(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 41\(3\); S.I. 2016/465, art. 2\(m\), Sch. 1 para. 1\(k\) \(with Sch. 2\) \(as amended \(22.3.2017\) by S.I. 2017/462, art. 16\)](#)

## 27D Acquisition and review of information

The Council shall have the function of obtaining and keeping under review—

- (a) information about consumer matters (including matters affecting consumers in different areas); and
- (b) information about the views of consumers on such matters (including the views of consumers in different areas).

## 27E Provision of advice and information to public authorities

(1) The Council shall have the function of—

- (a) making proposals, or providing advice and information, about consumer matters (including matters affecting consumers in different areas); and
- (b) representing the views of consumers on such matters (including the views of consumers in different areas),

to public authorities, companies holding an appointment under Chapter 1 of this Part, [<sup>F366</sup>water supply licensees, sewerage licensees] and other persons whose activities may affect the interests of consumers.

(2) Subject to subsection (7) below, information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

(3) Information relating to a particular individual or body may be disclosed if—

- (a) the individual or body has consented to the disclosure;
- (b) it is information that is available to the public from some other source; or
- (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to disclose any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—

- (a) consult that individual or body; and
- (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its disclosure;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) Subject to subsection (7) below, the Council shall not in the exercise of its function under this section disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

(6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether

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in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

- (7) Subsections (2) to (5) above do not apply to a disclosure of information which is made to the Authority, the Secretary of State, the Assembly, the [F367CMA] or any other public authority.
- (8) The disclosure by the Council of information in the exercise of its function under this section does not contravene section 206 below (restriction on disclosure of information).

#### Textual Amendments

- F366** Words in s. 27E(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\), s. 94\(3\), Sch. 7 para. 42](#); S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F367** Word in s. 27E(7) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 82](#) (with art. 3)

### 27F Provision of information to consumers

- (1) The Council has the function of providing information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.
- (2) That function may be exercised by—
  - (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
  - (b) furnishing information to any consumer (whether in response to a request or otherwise).
- (3) Information may only be disclosed in the exercise of that function if it is information that is available to members of the public from some other source.
- (4) The Council shall maintain at least one office in each of England and Wales at which consumers may apply for information.

### 27G Power to publish information and advice about consumer matters

- (1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
  - (a) the individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or

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- (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
  - (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;
 and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication of information under this section does not contravene section 206 below (restriction on disclosure of information).

### **Provision of information to the Council**

<sup>F368</sup>27H

- (1) The Council may direct—
  - (a) the Authority;
  - (b) a company holding an appointment under Chapter 1 of this Part; <sup>F369</sup> ...
  - (c) [<sup>F370</sup>a water supply licensee, or],
  - <sup>F371</sup>[ a sewerage licensee,]
  - (d) to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.
- (2) A body [<sup>F372</sup>or person] to whom a direction under this section is given shall, if the information specified or described in the direction is in its possession, comply with the direction as soon as reasonably practicable.
- (3) Before giving a direction under this section and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body [<sup>F373</sup>or person] to whom the direction is given.
- (4) If a body [<sup>F374</sup>or person] to whom a direction under this section is given fails to comply with the direction [<sup>F375</sup>the body or person] shall, if so required by the Council, give notice to the Council of the reasons for [<sup>F376</sup>the] failure.



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### Textual Amendments

- F368** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))
- F369** Word in s. 27H(1)(b) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F370** Words in s. 27H(1)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F371** S. 27H(1)(d) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(c)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F372** Words in s. 27H(2) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F373** Words in s. 27H(3) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F374** Words in s. 27H(4) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F375** Words in s. 27H(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(4)(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F376** Word in s. 27H(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(4)(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

## 271 Publication of notice of reasons

- (1) Subject to the following provisions of this section, the Council may publish a notice given to it under section 27H(4) above.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under subsection (1) above unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
  - (a) that individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
  - (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).

#### **Textual Amendments**

**F368** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))

### **27J Provision of information by the Council**

- (1) Any of—
  - (a) the Authority;
  - (b) the Secretary of State; or
  - (c) the Assembly,
 may direct the Council to supply to him or it, in such form as he or it may reasonably specify, such information specified or described in the direction as he or it may require for the purpose of exercising his or its functions.
- (2) The Council shall, if the information specified or described in the direction is in its possession, comply with a direction under this section as soon as reasonably practicable.
- (3) Where the Council fails to comply with a direction given under subsection (1) above it must give to the person who gave the direction notice of its reason for the failure, and that person may publish that notice in such manner as he considers appropriate.
- (4) A person publishing a notice under this section shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

#### **Textual Amendments**

**F368** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))

### **27K Sections 27H to 27J: supplementary**

- (1) The Secretary of State may make regulations prescribing—

*Status: Point in time view as at 18/07/2023.*

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- (a) descriptions of information which a person to whom a direction is given under section 27H or 27J above may refuse to supply; or
  - (b) circumstances in which such a person may refuse to comply with a direction given under either of those sections.
- (2) The Council may, if no person is prescribed for the purpose under subsection (3) below, refer a failure by a company holding an appointment [F377, a water supply licensee or a sewerage licensee] to comply with a direction under section 27H above to the Authority.
- (3) The Secretary of State may make regulations for the purpose of enabling a failure to comply with a direction under section 27H or 27J above to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.
- (4) A person to whom such a failure is referred (whether under subsection (2) above or regulations under subsection (3) above) shall—
- (a) consider any representations made by either party;
  - (b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
  - (c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.
- (5) The duty of a company holding an appointment [F378, a water supply licensee and a sewerage licensee] to comply with an order under this section shall be enforceable by the Authority under section 18 above.
- (6) A notice under subsection (4) above may be published by either party to the reference.
- (7) Subsections (2) to (7) of section 27I above apply to the publication of a notice under this section as they apply to the publication of a notice given to the Council under section 27H(4) above.]

#### Textual Amendments

- F368** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44, 105(3)**; S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))
- F377** Words in s. 27K(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 44(2)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F378** Words in s. 27K(5) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 44(3)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

## X128 Customer service committees.

F379 .....

#### Editorial Information

- X1** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F379** S. 28 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 35(4), 105(3), [Sch. 9 Pt. 2](#); [S. I. 2005/2714](#), [art. 2\(a\)\(m\)](#)

## x2<sup>F380</sup> 29 Consumer complaints

- (1) This section applies to a complaint which any person (“the complainant”) has against a relevant undertaker [<sup>F381</sup>, a water supply licensee or a sewerage licensee] in relation to any matter connected with the functions of that undertaker or the services provided [<sup>F382</sup>by that water supply licensee or that sewerage licensee].
- (2) Where a complaint to which this section applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsections (3) and (8) below) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (9) below.
- (3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under section 181 below, the Council shall, instead of investigating the matter to which it relates, refer the complaint to the Authority.
- (4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under section 18 or 22A above is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.
- (5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence, the Council shall refer the matter—
  - (a) to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales or to services provided [<sup>F383</sup>—
    - (i) by a water supply licensee using the supply system of a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) by a sewerage licensee using the supply system of a sewerage undertaker whose area is wholly or mainly in Wales]; or
  - (b) to the Secretary of State, in any other case.
- (6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Act, the Council shall, if the complainant consents, refer the matter to the Authority.
- (7) A referral under subsection (6) above shall have effect for the purposes of section 30A below as if it were a referral by the complainant of a dispute for determination by the Authority.
- (8) The Council is not required to investigate any matter if it appears to the Council that—
  - (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker [<sup>F384</sup>, the water supply licensee or the sewerage licensee];
  - (b) the relevant undertaker [<sup>F385</sup>, the water supply licensee or the sewerage licensee] has not been given a reasonable opportunity to deal with the complaint; or

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- (c) in a case mentioned in subsection (4) or (5) above or (where the complainant does not consent to the matter being referred to the Authority) subsection (6) above, it is inappropriate to do so.
- (9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the complainant to the relevant undertaker [<sup>F386</sup>, the water supply licensee or the sewerage licensee] about anything to which the complaint relates.
- (10) After investigating a complaint the Council may make a report to the Authority, the Secretary of State or the Assembly.
- (11) A report under subsection (10) above may include information about—
- (a) any representations made by the Council under subsection (9) above; and
  - (b) the response of the relevant undertaker or the licensed water supplier to the complaint or any such representations.
- (12) No report under subsection (10) above or information about a complaint referred to the Council under this section, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority, the Secretary of State or the Assembly in the exercise of any power under this Act without the consent of the complainant.
- (13) Where a representation made to the Authority, the Secretary of State or the Assembly about any matter (other than a representation appearing to the person to whom it is made to be frivolous or vexatious) appears to that person—
- (a) to be about a matter which is or amounts to a complaint to which this section applies (other than one which, in the case of the Authority, it is its duty to investigate under section 181 below); and
  - (b) to have been made by or on behalf of the complainant,
- that person shall refer the matter to the Council.]

#### Editorial Information

- X2** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Textual Amendments

- F380** S. 29 substituted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 46(1), 105(3)**; S.I. 2005/2714, **art. 2(f)** (with [Sch. paras. 3, 8](#))
- F381** Words in s. 29(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(2)(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F382** Words in s. 29(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(2)(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F383** Words in s. 29(5)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(3)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F384** Words in s. 29(8)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(4)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)
- F385** Words in s. 29(8)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(4)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, **art. 16**)

*Status: Point in time view as at 18/07/2023.*

*Changes to legislation: Water Industry Act 1991, Part II is up to date with all changes known to be in force on or before 19 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F386** Words in s. 29(9) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 45\(4\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

## **Power of Council to investigate other matters**

**F387** **29A**

- (1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.
- (2) Before undertaking an investigation under this section the Council shall consult the Authority, the Secretary of State and the Assembly.
- (3) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the [<sup>F388</sup>CMA], the Assembly or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.
- (4) Subject to subsection (5) below, the Council may—
  - (a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and
  - (b) publish any such report in such manner as the Council thinks appropriate.
- (5) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—
  - (a) shall not be included in a report which is to be sent to any person under subsection (4)(a) above, unless one or more of paragraphs (a) to (c) of subsection (6) below applies; and
  - (b) shall be excluded from any such report which is to be published under subsection (4)(b) above, unless one or more of paragraphs (a) to (c) of subsection (7) below applies.
- (6) Information relating to a particular individual or body may be included in a report to be sent under subsection (4)(a) above if—
  - (a) that individual or body has consented to the disclosure;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (7) Information relating to a particular individual or body may be included in a report to be published under subsection (4)(b) above if—
  - (a) that individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (8) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (6)(c) or (7)(c) above, the Council shall—
  - (a) consult that individual or body; and

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- (b) have regard to any opinion expressed by the Authority as to the application of subsection (6)(c) or (7)(c) above to the information or as to the desirability or otherwise of its inclusion in the report;  
and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (9) The Council shall not include in any report to be sent under subsection (4)(a) above or published under subsection (4)(b) above any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (10) In considering whether information relates to any matter as mentioned in subsection (9) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.]

#### Textual Amendments

- F387** S. 29A inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 47**, 105(3); S.I. 2005/2714, **art. 2(g)** (with [Sch. 2 para. 8](#))
- F388** Word in s. 29A(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), **art. 1(1)**, **Sch. 1 para. 83** (with [art. 3](#))

### <sup>x3</sup>30 Duties of Director with respect to complaints

**F389** .....]

#### Editorial Information

- X3** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Textual Amendments

- F389** S. 30 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 46(2)**, 105(3), **Sch. 9 Pt. 2**; S.I. 2005/2714, **art. 2(f)(m)** (with [Sch. paras. 3, 8](#))

*[<sup>F390</sup>Further functions of Authority*

#### Textual Amendments

- F390** Ss. 30ZA, 30ZB and preceding cross-heading inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 43(2)**, 105(3); S.I. 2005/2714, **art. 2(c)** (with [Sch. 2 para. 8](#))

### 30ZA Duty to consult Council

- (1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—

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- (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
  - (b) the Authority considers that it would be clearly inappropriate to consult the Council.
- (2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

### 30ZB Copies of notices

Where the Authority is required by any provision of this Act to publish a notice or any other document, it shall send a copy of the document to the Council.

### X4| F391 30A Determination of disputes by the Director.

- (1) In this section “relevant dispute” means a dispute which, by virtue of any provision of this Act, may be referred to the Director for determination under this section.
- (2) The practice and procedure to be followed in connection with the reference to the Director of any relevant dispute shall be such as he considers appropriate.
- (3) Where the Director determines any dispute under this section he shall give his reasons for reaching his decision with respect to the dispute.
- (4) On making a determination under this section the Director may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Director) as he considers appropriate.
- (5) A determination under this section—
  - (a) shall be final; and
  - (b) shall be enforceable as if it were a judgment of [F392 the county court], in so far as it includes such provision as to costs or expenses as is mentioned in subsection (4) above.
- (6) The Director shall not determine any relevant dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.
- (7) In including in any determination under this section any provision as to costs or expenses, the Director shall have regard to the conduct and means of the parties and any other relevant circumstances.]]

#### Editorial Information

- X4 The insertion of the new cross-heading "Further functions of Authority" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

#### Textual Amendments

- F391 S. 30A inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s.34](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 4, Sch. Pt.II



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**F392** Words in s. 30A(5) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 9 para. 52](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956, arts. 3-11](#))

*Provisions with respect to competition*

**31 Functions of Director with respect to competition.**

(1) <sup>F393</sup> .....

<sup>F394</sup>(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the <sup>F395</sup>CMA].

(2A) This subsection applies to the functions of the <sup>F396</sup>CMA] under Part 4 of the 2002 Act (other than sections 166 <sup>F397</sup>171 and 174E]) so far as <sup>F398</sup>those functions—

- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
- (b) relate to] commercial activities connected with the supply of water or the provision of sewerage services.]

<sup>F399</sup>(3) The Director shall be entitled to exercise, concurrently with the <sup>F400</sup>CMA], the functions of the <sup>F400</sup>CMA] under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) <sup>F401</sup>, 40B(1) to (4)] and 51), so far as relating to —

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act, <sup>F402</sup>or]

<sup>F403</sup>(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),]

which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.]

<sup>F404</sup>(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) <sup>F405</sup>above—

- (a) references] in Part 4 of the 2002 Act to the <sup>F406</sup>CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 <sup>F407</sup>, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise <sup>F408</sup>requires);
- (b) references in that Part to section 5 of the 2002 Act are to be construed as including references to section 27(1) and (2) of this Act.]

<sup>F409</sup>(4ZA) Section 130A of the 2002 Act is to have effect in its application in relation to the Authority] by virtue of subsections (2) and (2A)—

(a) as if for subsection (1) of that section there were substituted—

“(1) Where the Water Services Regulation Authority—

- (a) is proposing to carry out its functions under section 27(1) and (2) of the Water Industry Act 1991 in relation to a matter for the purposes mentioned in subsection (2), and
- (b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers

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- under section 174 (investigation) in connection with deciding whether to make a reference under section 131,  
 the Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and
- (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with the supply of water or the provision of sewerage services (within the meaning given by section 219(1) of the Water Industry Act 1991)”.]
- <sup>F410</sup>[(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to <sup>F411</sup>the CMA] are to be read as including a reference to the Director (<sup>F412</sup>except in sections 31D(1) to (6), 38(1) to (6)]<sup>F401</sup>, 40B(1) to (4)], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]
- <sup>F413</sup>(5) Before the <sup>F414</sup>CMA] or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.
- (6) Neither the <sup>F414</sup>CMA] nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]
- (7) It shall be the duty of the Director, for the purpose of assisting <sup>F415</sup>a CMA group] in carrying out an investigation on a <sup>F416</sup>market investigation reference made by the Authority (under section 131 of the 2002 Act)] by virtue of subsection (2) <sup>F417</sup>. . . above, to give to the <sup>F418</sup>group] —
- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the <sup>F418</sup>group] for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the <sup>F418</sup>group] without any such request; and
- (b) any other assistance which the <sup>F418</sup>group] may require, and which it is within his power to give, in relation to any such matters;
- and the <sup>F418</sup>group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.
- <sup>F419</sup>(7A) In subsection (7) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]
- (8) If any question arises as to whether subsection (2) or (3) above <sup>F420</sup>. . . applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—
- (a) <sup>F421</sup>Part 4 of the 2002 Act]; or
- <sup>F422</sup>[(b) Part I of the Competition Act 1998 (<sup>F423</sup>other than sections 31D(1) to (6), 38(1) to (6)]<sup>F424</sup>, 40B(1) to (4)] and 51),]
- by or in relation to the Director on the ground that it should have been done by or in relation to <sup>F425</sup>the CMA] .
- <sup>F426</sup>(8A) Section 117 of the 2002 Act (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions

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exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the [F427CMA] included references to the Director.]

(9) F428 .....

#### Textual Amendments

- F393** S. 31(1) ceases to have effect (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. (8) (a), Sch. 26; S.I. 2003/766, art. 2, Sch. (with transitional and transitory provisions in art. 3)
- F394** S. 31(2)(2A) substituted (20.6.2003) for s. 31(2) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, Sch. 9 para. 19(2); S.I. 2003/ 1397, {art. 2(1)}, Sch.
- F395** Word in s. 31(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(2) (with art. 3)
- F396** Word in s. 31(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(3)(a) (with art. 3)
- F397** Words in s. 31(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(3)(b) (with art. 3)
- F398** Words in s. 31(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(3)(c) (with art. 3)
- F399** S. 31(3) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 5, Sch. 2 para.4(2)(a)
- F400** Word in s. 31(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(4) (with art. 3)
- F401** Words in s. 31(3)(4A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 15 para. 5; S.I. 2014/416, art. 2(1)(f) (with Sch.); S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F402** Word in s. 31(3)(b) inserted (31.12.2020) by S.I. 2019/93, Sch. 1 para. 4(2) (as substituted by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1343), regs. 1(1), 16)
- F403** S. 31(3)(c) substituted for s. 31(3)(c)(d) by S.I. 2019/93, Sch. 1 para. 4(3) (as substituted by The Competition (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1343), regs. 1(1), 16)
- F404** S. 31(4) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, Sch. 9 para. 19(3); S.I. 2003/ 1397, {art. 2(1)}, Sch.
- F405** Words in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(5)(a) (with art. 3)
- F406** Word in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(5)(b) (with art. 3)
- F407** Words in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(5)(c) (with art. 3)
- F408** Words in s. 31(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(5)(d) (with art. 3)
- F409** S. 31(4ZA) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 84(6) (with art. 3)
- F410** S. 31(4A) 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(5)(8) (with s. 73); S.I. 1997/2750, art. 2(1); S.I. 2000/344, art. 2 Sch.

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- F411** Words in s. 31(4A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(7)** (with art. 3)
- F412** Words in s. 31(4A) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), **reg. 5**, Sch. 2 para. 4(2)(b)
- F413** S. 31(5)(6) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(4)**; S.I. 2003/1397, art. 2(1), Sch.
- F414** Word in s. 31(5)(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(8)** (with art. 3)
- F415** Words in s. 31(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(a)(i)** (with art. 3)
- F416** Words in s. 31(7) substituted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(a)(ii)** (with art. 3)
- F417** Words in s. 31(7) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), Sch. 10 Pt. II para. 5(5)(11), **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F418** Word in s. 31(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(9)(b)** (with art. 3)
- F419** S. 31(7A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(10)** (with art. 3)
- F420** Words in s. 31(8) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(1), 178, 179, Sch. 9 para. 19(5)(a), **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, Sch. (with savings in art. 10)
- F421** Words in s. 31(8) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(5)(b)**; S.I. 2003/1397, art. 2(1), Sch.
- F422** S. 31(8)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(12)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F423** Words in s. 31(8)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), **reg. 5**, **Sch. 2 para. 4(2)(c)**
- F424** Words in s. 31(8)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 5**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F425** Words in s. 31(8) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(11)** (with art. 3)
- F426** S. 31(8A) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(6)**; S.I. 2003/1397, art. 2(1), Sch.
- F427** Word in s. 31(8A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(12)** (with art. 3)
- F428** S. 31(9) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 168(1), 278, 279, Sch. 9 para. 19(7), **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, Sch. (with savings in art. 10)

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

- C51** S. 31(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 para. 5(1)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**  
 S. 31(3) amended (1.3.2000) by 1998 c. 41, ss. 54, 66(5), **Sch. 10 Pt. I para. 5(1)** (with s. 73); S.I. 2000/344, **art. 2 Sch.**

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**[<sup>F429</sup>32 Duty to refer merger of water or sewerage undertakings.**

[<sup>F430</sup>Subject to sections 33 and 33A below,] it shall be the duty of the [<sup>F431</sup>CMA to make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes] that it is or may be the case—

- (a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or
- (b) that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.]

**Textual Amendments**

- F429** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\), ss. 70\(1\), 279; S.I. 2004/3233, art. 2, Sch.](#) (with transitional provisions and savings in [arts. 3-5](#))
- F430** Words in [s. 32](#) substituted (18.12.2015) by [Water Act 2014 \(c. 21\), ss. 14\(1\), 94\(3\); S.I. 2015/1938, art. 2\(d\)](#)
- F431** Words in [s. 32](#) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 85](#) (with [art. 3](#))

**[<sup>F432</sup>33 Exclusion of small mergers from duty to make reference.**

- (1) The [<sup>F433</sup>CMA] shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the [<sup>F433</sup>CMA] —
  - (a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or
  - (b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.
- (2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—
  - (a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or
  - (b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.
- (3) For the purposes of subsection (1)(b) above—
  - (a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and
  - (b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.

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- (4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.
- (5) Regulations under subsection (4) above may, in particular, make provision as to—
- (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and
  - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the [<sup>F434</sup>CMA] to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).
- [<sup>F435</sup>(6A) The CMA must—
- (a) keep under review the conditions set out in subsection (1)(a) and (b), and
  - (b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.]
- (7) The Secretary of State may by regulations amend subsection (1) above so as—
- (a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or
  - (b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.
- (8) Regulations under subsection (7) above—
- (a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and
  - (b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.
- (9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.]

#### **Textual Amendments**

**F432** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, Sch. (with transitional provisions and savings in arts. 3-5)

**F433** Word in s. 33(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), **art. 1(1)**, **Sch. 1 para. 86** (with art. 3)

**F434** Word in s. 33(6) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), **art. 1(1)**, **Sch. 1 para. 86** (with art. 3)

**F435** S. 33(6A) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 15**, 94(2)(c)

#### [<sup>F436</sup>**33A Exceptions to duty to make reference**

- (1) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(a) if it believes that—

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

#### **Textual Amendments**

**F436** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

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

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

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- (3) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of this section as references to what the Authority believes.

#### Textual Amendments

**F436** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 14\(2\), 94\(3\)](#); [S.I. 2015/773](#), [art. 2\(2\)\(a\)](#); [S.I. 2015/1938](#), [art. 2\(d\)](#)

### 33C Statement of methods

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

#### Textual Amendments

**F436** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), [ss. 14\(2\), 94\(3\)](#); [S.I. 2015/773](#), [art. 2\(2\)\(a\)](#); [S.I. 2015/1938](#), [art. 2\(d\)](#)

### [<sup>F437</sup>33D Undertakings in lieu of a merger reference

- (1) If the CMA considers that it is under a duty to make a merger reference under section 32, it may instead of making such a reference accept undertakings to take such action as it thinks appropriate from such of the parties concerned in the actual or prospective merger as it considers appropriate.
- (2) The power under subsection (1) is to be exercised for the purpose of remedying, mitigating or preventing the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises that the actual or prospective merger has had, may have had or may be likely to have.
- (3) In forming a view for the purposes of subsection (1) as to whether it is under a duty to make a merger reference under section 32, the CMA—
- (a) is to disregard the effect of section 33A(4)(a), but



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

#### Textual Amendments

**F437** S. 33D inserted (18.12.2015) by [Water Act 2014 \(c. 21\)](#), ss. **14(3)**, 94(3); S.I. 2015/1938, art. 2(d)

#### [<sup>F438</sup>34 Application of provisions of Enterprise Act 2002

The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.]

#### Textual Amendments

**F438** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\)](#), ss. **70(1)**, 279; S.I. 2004/3233, art. 2, Sch. (with transitional provisions and savings in arts. 3-5)

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### **[<sup>F439</sup>35 Construction of merger provisions.**

- (1) In this Chapter (including Schedule 4ZA)—
  - “enterprise” has the same meaning as in Part 3 of the 2002 Act; and
  - “water enterprise” means an enterprise carried on by a [<sup>F440</sup>relevant undertaker].
- (2) References in this Chapter (including Schedule 4ZA), in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part 3 of the 2002 Act, to be distinct enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.
- (3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the [<sup>F441</sup>CMA] or the Secretary of State, in a case in which, or to any extent to which, the [<sup>F441</sup>CMA] is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.
- (4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.
- (5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the [<sup>F442</sup>CMA] is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.]

#### **Textual Amendments**

- F439** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\), ss. 70\(1\), 279; S.I. 2004/3233, art. 2, Sch.](#) (with transitional provisions and savings in arts. 3-5)
- F440** S. 35(1): words in definition of "water enterprise" substituted (29.12.2004) by [Water Act 2003 \(c. 37\), ss. 101\(1\), 105\(3\), Sch. 7 para. 27\(2\); S.I. 2004/2528, art. 3](#) (with savings in art. 4)
- F441** Word in s. 35(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 87](#) (with art. 3)
- F442** Word in s. 35(5) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 87](#) (with art. 3)

#### *[<sup>F443</sup>Disclosure of arrangements for remuneration*

#### **Textual Amendments**

- F443** S. 35A and preceding cross-heading inserted (1.10.2004) by [Water Act 2003 \(c. 37\), ss. 50, 105\(3\); S.I. 2004/2528, art. 2\(g\)](#)

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### **35A Remuneration and standards of performance**

- (1) This section applies to any company holding an appointment under Chapter 1 of this Part.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
  - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3) below; and
  - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.
- (4) A description under subsection (2)(b) above must include in particular—
  - (a) a statement of when the arrangements were made;
  - (b) a description of the standards of performance in question;
  - (c) an explanation of the means by which the standards of performance are assessed; and
  - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) above must also state—
  - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3) above; or
  - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) above must—
  - (a) include in particular the matters listed in subsection (4)(a), (b) and (c) above; and
  - (b) where the arrangements described are different from any arrangements described under subsection (2)(b) above, state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) above must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2) above—
  - (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
  - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—

“remuneration” in relation to a director of a company—

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- (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
  - (b) includes remuneration in respect of any of his services while a director of the company;
    - “standards of performance”, in relation to any company, include any standards which are—
      - (a) set by or under any conditions of the company’s appointment under Chapter 1 of this Part;
      - (b) contained in or prescribed by regulations made under section 38(1)(b) or (2) or section 95(1)(b) or (2) below; or
      - (c) set or agreed to by the company.
- (11) Any requirement imposed by this section shall be treated as a statutory requirement enforceable under section 18 above by the Authority.]

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

**C52** S. 35A applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013](#) (S.I. 2013/1582), reg. 1(1)(b), [Sch. 1 para. 9](#) (with reg. 1(1)(c))

## CHAPTER IV

### INTERPRETATION OF PART II

#### 36 Interpretation of Part II.

- (1) In this Part—
- [<sup>F444</sup>“the 1973 Act” means the <sup>M5</sup>Fair Trading Act 1973; and]
  - “the 1980 Act” means the <sup>M6</sup>Competition Act 1980.
  - [<sup>F445</sup>“the 2002 Act” means the Enterprise Act 2002;]
- (2) References in this Part to an appointment or variation replacing a company as a relevant undertaker are references to the following, that is to say—
- (a) the appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker; or
  - (b) a variation by virtue of which the area for which a company holds an appointment under Chapter I of this Part is modified so as to include the whole or any part of an area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker.
- (3) For the purposes of this Part premises in a part of an area are served by a company holding an appointment under Chapter I of this Part—
- (a) in relation to an appointment or variation by virtue of which that company would be replaced as the water undertaker for that part of that area, if those premises—
    - (i) are supplied with water by means of a connection with a distribution main of that company; or

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<sup>F446</sup>(ii) .....

and

(b) in relation to an appointment or variation by virtue of which that company would be replaced as the sewerage undertaker for that part of that area, if those premises—

(i) are drained by means of a relevant sewer [<sup>F447</sup>or drain] ; or

<sup>F448</sup>(ii) .....

(4) In this section—

“distribution main” means a water main that is not a trunk main; and  
[<sup>F449</sup>“relevant sewer or drain”, in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following, that is to say—

(a) a public sewer or lateral drain vested in that company;

(b) a sewer or lateral drain in relation to which that company has made a declaration of vesting under section 102 below which has not yet taken effect;

(c) a sewer or lateral drain in relation to which that company has entered into an agreement under section 104 below.]

#### Textual Amendments

**F444** Words in s. 36(1) ceased to have effect (29.12.2004) and repealed (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 278, 279, [Sch. 9 para. 8\(a\)](#), Sch. 26; S.I. 2004/3233, [art. 2](#), Sch. (with arts. 3-5)

**F445** Words in s. 36(1) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, [Sch. 9 para. 8\(b\)](#); S.I. 2003/1397, [art. 2\(1\)](#), Sch.

**F446** S. 36(3)(a)(ii) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 40(5)(a), 56(7), [Sch. 2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

**F447** Words in s. 36(3)(b)(i) inserted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 97\(2\)\(a\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with art. 6, Sch. 3)

**F448** S. 36(3)(b)(ii) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 40(5)(b), 56(7), [Sch. 2](#); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

**F449** S. 36(4): definition substituted (28.5.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 97\(2\)\(b\)](#), 105(3); S.I. 2004/641, [art. 4\(b\)](#) (with art. 6, Sch. 3)

#### Marginal Citations

**M5** 1973 c. 41.

**M6** 1980 c. 21.

**Status:**

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**Changes to legislation:**

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