



Water Industry Act 1991

1991 CHAPTER 56

PART II **E+W**

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I **E+W**

APPOINTMENTS

Conditions of appointments

11 Power to impose conditions. **E+W**

- (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 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.

Status: Point in time view as at 14/07/2014.

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- (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. E+W

- (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 [^{F1}the Authority] 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 [^{F1}the Authority] 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 [^{F1}the Authority]; or
 - (b) on a reference by [^{F1}the Authority], the [^{F2}CMA],
 of such questions arising under the appointment and of such other matters, including (in the case of references to [^{F3}the CMA]) disputes as to determinations by [^{F1}the Authority], as are specified in the appointment or are of a description so specified.
- (3) Where any question or other matter falls to be determined by the [^{F4}CMA] in pursuance of a provision contained in an appointment under this Chapter—
 - (a) it shall be the duty of [^{F1}the Authority], on being required to do so by the company holding that appointment, to refer that question or matter to [^{F5}the CMA]; and
 - (b) it shall be the duty of [^{F5}the CMA] to determine any question or other matter referred by virtue of paragraph (a) above in accordance with—

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^{F6}(i)

(ii) the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by [^{F1}the Authority].

[^{F7}(3A) For the purposes of subsection (3) above, where—

- (a) the question or matter referred to the [^{F8}CMA] concerns the review of a price control imposed on the company holding the appointment; and
- (b) the [^{F8}CMA] 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 [^{F8}CMA] 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 [^{F9}sections 14A and 14B], below apply to references to the [^{F10}CMA] under this section as they apply to references under section 14.

(3C) A report of the [^{F10}CMA] 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 [^{F10}CMA], 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.]

[^{F11}(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 [^{F12}14B]).]

^{F13}(4)

^{F13}(5)

Textual Amendments

- F1** Words in Act substituted (1.4.2006) by virtue of Water Act 2003 (c. 37), ss. 36(2), 105(3); S.I. 2005/2714, art. 4(c)
- F2** 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.)
- F3** 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.)
- F4** 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.)
- F5** 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.)
- F6** 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.)

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- F7** 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.)
- F8** 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.)
- F9** Words in s. 12(3B) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(s), **Sch. 7 para. 8(a)**
- F10** 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.)
- F11** 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.)
- F12** Word in s. 12(3D) substituted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(s), **Sch. 7 para. 8(b)**
- F13** 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.)

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