



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART II

#### APPOINTMENT AND REGULATION OF UNDERTAKERS

#### CHAPTER I

#### APPOINTMENTS

##### *Modification of appointment conditions*

#### **13 Modification by agreement.**

- (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the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.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.

*Status: Point in time view as at 28/10/2016.*

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

- (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.

#### 14 **Modification references to [F1CMA].**

- (1) The Director may make to the [F2CMA] a reference which is so framed as to require [F3the 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 [F4CMA] 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 [F5the 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 [F6CMA] 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.

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- (5) It shall be the duty of the Director, for the purpose of assisting the [F7CMA] in carrying out an investigation on a reference under this section [F8or in carrying out functions under section 16A below], to give to [F9the CMA] —
- (a) any information in his possession which relates to matters falling within the scope of the investigation [F10or the carrying out of those functions], and which is either—
- (i) requested by [F9the CMA] for that purpose; or
- (ii) information which, in his opinion, it would be appropriate for that purpose to give to [F9the CMA] without any such request;
- and
- (b) any other assistance which [F9the CMA] may require, and which it is within his power to give, in relation to any such matters;
- and [F9the CMA], for the purpose of carrying out any such investigation [F11or 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 [F12CMA] 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.
- [F13(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) F14 .....
- (7A) F14 .....
- (8) F15 .....
- (8A) F15 .....

#### Textual Amendments

- F1** 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.)
- F2** 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.)
- F3** 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.)
- F4** 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.)
- F5** 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.)
- F6** 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.)
- F7** 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.)

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- F8** 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.)
- F9** 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.)
- F10** 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.)
- F11** 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.)
- F12** 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.)
- F13** 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.)
- F14** 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)
- F15** 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>F16</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>F17</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>F17</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**

- F16** 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.
- F17** 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.)

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## 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>F18</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).

[ Section 109 shall, in its application by virtue of subsection (1) above, have effect as <sup>F19</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>F20</sup> ...

[ after subsection (3), there were inserted—

<sup>F21</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>F22</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.]

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### Textual Amendments

- F16** 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.
- F18** 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)
- F19** 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)
- F20** 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)
- F21** 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)
- F22** 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 [F23CMA] —
- (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.
- [F24(1A) For the purposes of section 16 below, a conclusion contained in a report of the [F25CMA] is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [F26] 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 [F27CMA], the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]
- [F28(2) .....
- [F29(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [F30CMA] on a reference under section 14 above.
- (3A) In making any report on a reference under section 14 above the [F30CMA] must have regard to the following considerations before disclosing any information.

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- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [F<sup>30</sup>CMA] 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 [F<sup>30</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>30</sup>CMA] thinks might significantly harm the individual's interests.
- (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 [F<sup>31</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

- F23** 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.)
- F24** 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.
- F25** 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.)
- F26** 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.)
- F27** 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.)
- F28** 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.](#)
- F29** 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.
- F30** 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.)

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**F31** 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>F32</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;
  - (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>F33</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>F34</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.



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- (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
  - (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

- F32** 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.)
- F33** 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)
- F34** 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>F35</sup>16A [<sup>F36</sup>CMA's] power of veto following report

- (1) [<sup>F37</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>F38</sup>CMA] is given a notice under section 16(4A) above and on the application of the [<sup>F38</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>F38</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>F38</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;

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- (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 [F38CMA] 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 [F38CMA] 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 [F38CMA] 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 [F38CMA] 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 [F38CMA] shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

F39(10) .....

#### Textual Amendments

- F35** 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.](#))
- F36** 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.](#))
- F37** 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.](#))
- F38** 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.](#))
- F39** 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 [F40CMA'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.

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- (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 [F41CMA] 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 [F41CMA] 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 [F41CMA] 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 [F41CMA] 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 [F42(6A),] (7) and (8) below, for the purposes of any investigation by the [F43CMA] 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 F44(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;
- [F45(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

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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 <sup>[F46]</sup>CMA under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the <sup>[F46]</sup>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 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

- F35** 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.)
- F40** 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.)
- F41** 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.)
- F42** Word in s. 16B(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. 76(2)** (with art. 3, Sch. 2 para. 2)
- F43** 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.)
- F44** 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)
- F45** 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)
- F46** 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.)

#### 17 Modification by order under other enactments.

- <sup>[F47]</sup>(1) Where the <sup>[F48]</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

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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—
- (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>F49</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>F50</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

- F47** 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)
- F48** 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.)
- F49** 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)
- F50** 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)

- C1** 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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