



Water Industry Act 1991

1991 CHAPTER 56

PART III

WATER SUPPLY

CHAPTER IV

FLUORIDATION

87 Fluoridation of water supplies at request of health authorities.

- (1) Where a [^{F1}Health Authority] have applied in writing to a water undertaker for the water supplied within an area specified in the application to be fluoridated, that undertaker may, while the application remains in force, increase the fluoride content of the water supplied by the undertaker within that area.
- (2) For the purposes of subsection (1) above an application under this section shall remain in force until the Health Authority, after giving reasonable notice to the water undertaker, withdraw it.
- (3) The area specified in an application under this section may be the whole, or any part of, the [^{F2}area of the Health Authority] making the application.
- (4) Where in exercise of the power conferred by this section, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine, that is to say—
 - hexafluorosilicic acid (H₂SiF₆);
 - disodium hexafluorosilicate (Na₂SiF₆).
- (5) Any [^{F3}Health Authority] making arrangements with a water undertaker in pursuance of an application under this section shall ensure that those arrangements include provisions designed to secure that the concentration of fluoride in the water supplied to consumers in the area in question is, so far as reasonably practicable, maintained at one milligram per litre.

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- (6) Water to which fluoride has been added by a water undertaker in exercise of the power conferred by this section (with a view to its supply in any area) may be supplied by that or any other undertaker to consumers in any other area if the undertaker or undertakers concerned consider that it is necessary to do so—
- (a) for the purpose of dealing with any serious deficiency in supply; or
 - (b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by any of the undertakers concerned.
- (7) In subsection (6) above—
- (a) the reference to water to which fluoride has been added by a water undertaker in exercise of the power conferred by this section includes a reference to water to which fluoride has been added by a water authority (within the meaning of the ^{M1}Water (Scotland) Act 1980) in exercise of the power conferred by section 1 of the ^{M2}Water (Fluoridation) Act 1985; and
 - (b) in relation to a supply of such water by a water undertaker, the reference to the water undertakers concerned shall have effect as references to the water undertaker and the water authority concerned.
- (8) In this section “serious deficiency in supply” means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.
- (9) In this section and the following provisions of this Chapter references to a [^{F4}Health Authority are references to any Health Authority established under section 8 of the National Health Service Act 1977.].

Textual Amendments

- F1** Words in s. 87(1) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(1)(2)(a)** (with **Sch. 2 para. 6**)
- F2** Words in s. 87(3) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(1)(2)(b)** (with **Sch. 2 para. 6**)
- F3** Words in s. 87(5) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(1)(2)(c)** (with **Sch. 2 para. 6**)
- F4** Words in s. 87(9) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(1)(2)(d)** (with **Sch. 2 para. 6**)

Modifications etc. (not altering text)

- C1** S. 87: functions not to be exercised by a primary care trust (1.4.2000) by virtue of S.I. 2000/695, art. 4(1), **Sch. 4**

Marginal Citations

- M1** 1980 c. 45.
M2 1985 c. 63.

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VALID FROM 25/02/2009

[^{F5}87A Target concentration of fluoride

- (1) Arrangements under section 87(1) above shall include provision for securing that, so far as reasonably practicable, the concentration of fluoride in the water supplied to premises in the specified area is maintained at the general target concentration of one milligram per litre.
- (2) But the arrangements may provide for the concentration in the specified area (or any part of it) to be lower than that if the relevant authority considers that it is not reasonably practicable to achieve the general target concentration in the specified area (or that part of it).
- (3) Any such lower concentration must still be as high as is reasonably practicable in the circumstances.
- (4) If, in relation to any area (“area A”), an order under section 88A(1) below specifies a general target concentration lower than that for which any arrangements effective there provide (or, by the previous operation of this subsection, are taken to provide), the arrangements shall have effect from the coming into force of the order as if they provided for the general target concentration specified in the order (subject to the operation again of subsections (2) and (3) above).
- (5) If the result of the operation of subsection (4) above in relation to arrangements in area A is that in an area adjoining area A (“area B”) it is not reasonably practicable to maintain the concentration of fluoride in the water supplied by virtue of arrangements made in area B with the same water undertaker, the order shall be taken to extend also to area B so far as those arrangements are concerned, and subsection (4) above shall apply accordingly.
- (6) An order under section 88A(1) below which in relation to any area specifies a general target concentration higher than that for which any arrangements effective there provide (or are taken to provide by virtue of subsection (4) or (5) above) does not have effect to increase the concentration for which the arrangements provide (or are taken to provide).
- (7) In this section, “specified area” means the area specified in arrangements under section 87(1) above.]

Textual Amendments

- F5** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(2\)\(11\)-\(14\)](#), [105\(3\)](#); [S.I. 2008/1922](#), [art. 2\(a\)](#); [S.I. 2009/359](#), [art. 2](#), (with saving in art. 3, Sch. 3)

VALID FROM 25/02/2009

[^{F6}87B Fluoridation arrangements: determination of terms

- (1) This section applies if a relevant authority and a water undertaker fail to agree—

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- (a) the terms of arrangements requested by the relevant authority pursuant to subsection (1) of section 87 above; or
 - (b) a variation in the terms of those arrangements following a request by the relevant authority pursuant to subsection (6)(c) of that section.
- (2) In relation to areas in England (except where subsection (4) below applies)—
- (a) the relevant authority may refer the matter to the Secretary of State for determination;
 - (b) following such a reference, the Secretary of State may—
 - (i) determine the terms of the arrangements as he sees fit; or
 - (ii) refer the matter for determination by such other person as he considers appropriate; and
 - (c) the determination of the Secretary of State or, as the case may be, the other person shall be final.
- (3) In relation to areas in Wales (except where subsection (4) below applies)—
- (a) the Assembly may—
 - (i) determine the terms of the arrangements itself as it sees fit; or
 - (ii) refer the matter for determination by such other person as it considers appropriate; and
 - (b) the determination of the Assembly or, as the case may be, the other person shall be final.
- (4) Where the Assembly is one of the relevant authorities which has made a combined reference under section 87(8)(b) or (10) above—
- (a) the terms of the arrangements shall be determined by a person appointed by the Secretary of State and the Assembly acting jointly; and
 - (b) the determination of that person shall be final.
- (5) Following determination under this section of the terms to be included in any arrangements—
- (a) the relevant authority shall give notice of the determination to the water undertaker in question; and
 - (b) the undertaker shall be deemed to have entered into the arrangements under section 87(1) above on the terms determined under this section with effect from the day after the date of the notice.
- (6) References in this Chapter to arrangements entered into under section 87(1) above shall include arrangements deemed to have been entered into under that section by virtue of subsection (5)(b) above.]

Textual Amendments

- F6** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(2\)\(11\)-\(14\)](#), [105\(3\)](#); S.I. 2008/1922, [art. 2\(a\)](#); S.I. 2009/359, [art. 2](#), (with saving in art. 3, Sch. 3)

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VALID FROM 25/02/2009

[^{F7}87C Fluoridation arrangements: compliance

- (1) It shall be the duty of each water undertaker to comply with any arrangements entered into by it under section 87(1) above.
- (2) Where, pursuant to any such arrangements, the fluoride content of any water is increased, the increase may be effected only by the addition of one or more of the following compounds of fluorine—
 - hexafluorosilicic acid (H_2SiF_6)
 - disodium hexafluorosilicate (Na_2SiF_6).
- (3) Subject to subsection (4) below, water to which fluoride has been added pursuant to any such arrangements entered into by a water undertaker (with a view to its supply in an area) may be supplied by that or any other undertaker to premises in any other area (whether or not that other area is the subject of arrangements under section 87(1) above).
- (4) Subsection (3) above applies if (and only if) the undertaker or undertakers concerned consider that it is necessary for the water to be supplied in the other area—
 - (a) for the purpose of dealing with any serious deficiency in supply; or
 - (b) in connection with the carrying out of any works (including cleaning and maintenance) by the undertaker concerned or, as the case may be, by the undertakers concerned, or by a licensed water supplier supplying water using its or their supply system.
- (5) In this section—
 - (a) the reference, in subsection (3) above, to water to which fluoride has been added pursuant to arrangements includes a reference to water to which fluoride has been added by Scottish Water in exercise of the power conferred by section 1 of the Water (Fluoridation) Act 1985; and
 - (b) in relation to a supply of such water by a water undertaker, the reference, in subsection (4) above, to the water undertakers concerned shall have effect as references to the water undertaker and Scottish Water.
- (6) In subsection (4) above, “serious deficiency in supply” means any existing or threatened serious deficiency in the supply of water (whether in quantity or quality) caused by an exceptional lack of rain or by any accident or unforeseen circumstances.
- (7) Arrangements entered into under section 87(1) above shall remain in force until the relevant authority, after giving reasonable notice to the water undertaker, terminates them.
- (8) But (except where it is reasonably practicable to terminate the arrangements separately), arrangements to which section 87(8)(a) or (b) applied may only be terminated by the relevant authorities acting jointly.]

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Textual Amendments

- F7** Ss. 87-87C substituted for s. 87 (1.8.2008 for E. for certain purposes as regards s. 87 and 25.2.2009 for E. for all other purposes) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(2\)\(11\)-\(14\)](#), [105\(3\)](#); S.I. 2008/1922, [art. 2\(a\)](#); S.I. 2009/359, [art. 2](#), (with saving in [art. 3](#), Sch. 3)

88 Power to vary permitted fluoridation agents.

- (1) The Secretary of State may by order amend section 87(4) above by—
 - (a) adding a reference to another compound of fluorine; or
 - (b) removing any reference to a compound of fluorine.
- (2) The power of the Secretary of State to make orders under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

PROSPECTIVE

[^{F8}88A Power to vary target concentration of fluoride

- (1) The appropriate authority may by order made by statutory instrument provide that section 87A(1) above is to have effect as if for “one milligram per litre” there were substituted a lower concentration specified in the order.
- (2) An order under subsection (1) above may make different provision for different geographical areas, or for some such areas and not others.
- (3) A statutory instrument containing an order under subsection (1) above shall not be made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) In subsection (1) above “appropriate authority”—
 - (a) in relation to an area which is partly in England and partly in Wales, means the Secretary of State and the Assembly acting jointly;
 - (b) in relation to an area which is wholly in England, means the Secretary of State; and
 - (c) in relation to an area which is wholly in Wales, means the Assembly.
- (5) An order amending or revoking an order under subsection (1) above made by virtue of subsection (4)(a) above must also be made by the Secretary of State and the Assembly acting jointly.]

Textual Amendments

- F8** S. 88A inserted (25.2.2009 for E.) by [Water Act 2003 \(c. 37\)](#), [ss. 58\(4\)](#), [105\(3\)](#); S.I. 2009/359, [art. 2\(b\)](#) (with saving in [art. 3](#), Sch.)

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89 Publicity and consultation.

- (1) This section applies where a [^{F9}Health Authority] propose to make or withdraw an application under section 87 above.
- (2) At least three months before implementing their proposal the [^{F9}Health Authority] shall—
 - (a) publish details of the proposal in one or more newspapers circulating within the area affected by the proposal; and
 - (b) give notice of the proposal to every local authority whose area falls wholly or partly within that area.
- (3) Before implementing the proposal the [^{F9}Health Authority] shall consult each of the local authorities to which they are required, by virtue of subsection (2)(b) above, to give notice of the proposal.
- (4) The [^{F9}Health Authority] shall, not earlier than seven days after publishing details of the proposal in the manner required by subsection (2)(a) above, republish them in that manner.
- (5) Where a [^{F9}Health Authority] have complied with this section in relation to the proposal they shall, in determining whether or not to proceed, have such regard as they consider appropriate—
 - (a) to any representations which have been made to them with respect to it; and
 - (b) to any consultations under subsection (3) above.
- (6) The Secretary of State may direct that this section shall not apply in relation to any proposal of a [^{F9}Health Authority] to withdraw an application under section 87 above.
- (7) Where, at any meeting of a [^{F9}Health Authority], consideration is given to the question whether the [^{F10}Health Authority] should make or withdraw an application under section 87 above, section 1(2) of the ^{M3}Public Bodies (Admission to Meetings) Act 1960 (which allows the exclusion of the public in certain circumstances) shall not apply to any proceedings on that question.
- (8) In this section “local authority” includes a county council.

Textual Amendments

F9 Words in s. 89 substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(3)(a)** (with **Sch. 2 para. 6**)

F10 Words in s. 89(7) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), **Sch. 1 Pt. III para. 120(3)(b)** (with **Sch. 2 para. 6**)

Marginal Citations

M3 1960 c. 67.

90 Indemnities in respect of fluoridation.

The Secretary of State may, with the consent of the Treasury, agree to indemnify any water undertaker in respect of such of any of the following as he thinks fit, that is to say—

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- (a) liabilities incurred by the undertaker in connection with anything done by the undertaker for the purpose of increasing the fluoride content of any water supplied by the undertaker;
- (b) costs or expenses which are incurred by the undertaker, or for which the undertaker is liable, in connection with any proceedings which have been or may be brought by any person with respect to—
 - (i) things done for the purpose of increasing the fluoride content of any water; or
 - (ii) a proposal to increase the fluoride content of any water;
- (c) expenditure incurred by the undertaker in complying with an order made in any such proceedings;
- (d) liabilities transferred to the undertaker in accordance with a scheme under Schedule 2 to the ^{M4}Water Act 1989 or Schedule 2 to this Act which, in relation to the person from whom they were transferred, were liabilities falling within paragraph (a) above or liabilities in respect of costs, expenses or other expenditure mentioned in sub-paragraph (b) or (c) above.

Marginal Citations

M4 1989 c. 15.

VALID FROM 18/02/2005

[^{F11}90A Review of fluoridation

- (1) A relevant authority which has entered into arrangements under section 87(1) above shall—
 - (a) monitor the effects of the arrangements on the health of persons living in the area specified in the arrangements; and
 - (b) in accordance with subsections (3) to (5) below publish reports containing an analysis of those effects.
- (2) The relevant authority shall make available—
 - (a) any information collected by it for the purposes of subsection (1) above; or
 - (b) summaries of that information.
- (3) The relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which the arrangements come into force (unless section 91(1) below applies in relation to the arrangements).
- (4) Where section 91(1) below applies in relation to the arrangements, the relevant authority shall publish a report under subsection (1)(b) above within the period of four years beginning with the date on which section 58 of the Water Act 2003 came into force.
- (5) The relevant authority shall publish a further report under subsection (1)(b) above within each period of four years beginning with the date on which their last such report was published.

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(6) This section ceases to apply in relation to any arrangements under section 87(1) above if those arrangements are terminated.]

Textual Amendments

F11 Ss. 90, 90A substituted for s. 90 (18.2.2005 (E.) for specified purposes and 25.2.2009 (E.) insofar as not already in force) by Water Act 2003 (c. 37), ss. 58(6), 105(3); S.I. 2005/344, art. 2; S.I. 2009/359, art. 2(c) (subject to art. 3, Sch.)

91 Pre-1985 fluoridation schemes.

Schedule 7 to this Act shall have effect with respect to fluoridation schemes made before the coming into force of the ^{M5}Water (Fluoridation) Act 1985.

Marginal Citations

M5 1985 c. 63.

Status:

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