



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART II

#### APPOINTMENT AND REGULATION OF UNDERTAKERS

### CHAPTER II

#### ENFORCEMENT OF INSOLVENCY

#### *[<sup>F1</sup>Financial penalties*

#### **[<sup>F1</sup>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 company 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 company holding a licence under Chapter 1A of this Part, that the company—
    - (i) has contravened or is contravening any condition of the licence; 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 condition of the appointment,

the Authority may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.

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*Status: Point in time view as at 01/01/2016. This version of this provision has been superseded.*

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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 company holding a licence under Chapter 1A of this Part of any such requirement; or
  - (b) in the case of any company holding a licence under Chapter 1A 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 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 the company 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 company 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, the enforcement authority shall give notice—
- (a) stating that he or it has imposed a penalty on the company 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 company, by which the penalty is required to be paid.
- (7) The company may, within twenty-one days of the date of service on it 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 company;
  - (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 10% of the turnover of the company (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>F2</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.]]

#### Textual Amendments

- F1** 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)

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**F2** 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)**

**C1** 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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