



Water Industry Act 1991

1991 CHAPTER 56

PART III

WATER SUPPLY

CHAPTER I

GENERAL DUTIES OF WATER UNDERTAKERS [^{F1}ETC]

39 Procedure for regulations under section 38.

[^{F1}(A1) The Secretary of State may make regulations under section 38 above—

- (a) on an application by the Authority, in accordance with subsections (1) to (3) below; or
- (b) otherwise than on such an application, in accordance with subsections (4) to (8) below.]

(1) [^{F2}Where the Authority has made to the Secretary of State a written application complying with subsection (2) below, the Secretary of State may make regulations under section 38 above if—]

^{F3}[(b) the Secretary of State is satisfied that a copy of the application has been served by the Director—

(i) on every water undertaker specified in the application;^{F4} . . .

(ii) on persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations;]

[^{F5}(iii) on the Council; and

(iv) on such other persons or bodies as the Secretary of State may consider appropriate;]

(c) such period as the Secretary of State considers appropriate has been allowed for the making—

(i) by the Director; and

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- (ii) by any affected water undertaker [^{F6}or person or body on whom a copy of the application has been served under paragraph [^{F7}(b)] above], of representations or objections with respect to the Director's proposals and any modifications proposed by the Secretary of State; and
- (d) the Secretary of State has considered [^{F8}the summary mentioned in subsection (2)(bb) below,] the Director's reasons for his proposals and every representation or objection which has been duly made with respect to those proposals, or any proposed modifications of those proposals, and has not been withdrawn.
- ^{F9}[(1A) Before making an application to the Secretary of State under this section the Director shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results.]
- (2) An application made by the Director to the Secretary of State complies with this subsection if it—
- (a) sets out [^{F10}the Authority's proposals for the making of] regulations under section 38 above;
- (b) specifies the water undertaker or undertakers in relation to which it is proposed [^{F11}the regulations] should apply
- ^{F12}[(bb) is accompanied by a written summary of the results of the research carried out in accordance with subsection (1A) above;] ; and
- (c) summarises the Director's reasons for his proposals.
- (3) The Secretary of State shall not make any regulations [^{F13}on an application by the Authority under this section] except where—
- (a) the only provisions of the regulations are [^{F14}those which in the opinion of the Secretary of State give effect to the proposals set out in the Authority's application or to those proposals] with such modifications as the Secretary of State considers appropriate; and
- (b) each of the modifications (if any) of the Director's proposals to which effect is given by the regulations is a modification the proposal to make which has been notified—
- (i) to the Director;^{F15} . . .
- (ii) to any water undertaker appearing to the Secretary of State to be likely to be affected by the modifications [^{F16}and
- (iii) to any person or body on whom a copy of the Authority's application was served under subsection (1)(b) above.]
- ^{F17}(4) Where no such application as is mentioned in subsection (1) above has been made, the Secretary of State may make regulations under section 38 above only if he considers—
- (a) that the regulations will contribute towards the attainment of policies relating to public health or the environment; or
- (b) (if he does not consider that they will so contribute) that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made.
- (5) Before making regulations under section 38 above by virtue of subsection (4) above, the Secretary of State shall—
- (a) give notice of his proposals;

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- (b) consider the results of the research carried out in accordance with subsection (7) below; and
 - (c) consider every representation or objection with respect to the proposals which has been duly made and not withdrawn.
- (6) A notice under subsection (5)(a) above must—
- (a) summarise the Secretary of State’s reasons for his proposals;
 - (b) specify the water undertaker or undertakers in relation to which it is proposed the regulations should apply; and
 - (c) specify the period within which objections or representations with respect to the proposals may be made.
- (7) Before giving notice under subsection (5)(a) above the Secretary of State shall arrange for such research as he considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected.
- (8) A notice under subsection (5)(a) above shall be given by serving a copy on—
- (a) the Authority;
 - (b) the Council;
 - (c) every water undertaker to which the regulations will apply;
 - (d) persons or bodies appearing to the Secretary of State to be representative of persons likely to be affected by the regulations; and
 - (e) such other persons or bodies as the Secretary of State may consider appropriate.]

Textual Amendments

- F1** S. 39(A1) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(2)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Sch. 1](#), 2)
- F2** S. 39(1): words substituted (1.4.2005) for para. (a) and preceding words by virtue of [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Sch. 1](#), 2)
- F3** S. 39(1)(b) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 19(2)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F4** Word in s. 39(1)(b)(i) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(b)**, 101(2), 105(3), **Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in [art. 4](#), [Sch. 1](#), 2)
- F5** S. 39(1)(b)(iii)(iv) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Sch. 1](#), 2)
- F6** Words in s. 39(1)(c)(ii) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 56(6), **Sch. 1 para. 19(3)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F7** Words in s. 39(1)(c)(ii) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(3)(c)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Sch. 1](#), 2)
- F8** Words in s. 39(1)(d) substituted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(2); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt.I
- F9** S. 39(1A) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 26(3); [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I
- F10** Words in s. 39(2)(a) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(4)(a)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Sch. 1](#), 2)
- F11** Words in s. 39(2)(b) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 41(4)(b)**, 105(3); S.I. 2005/968, **art. 2(h)** (with savings in [art. 4](#), [Sch. 1](#), 2)

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- F12** S. 39(2)(bb) inserted (1.7.1992) by **Competition and Service (Utilities) Act 1992 (c. 43), s. 26(4)**; Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 3, Sch. Pt.I
- F13** Words in s. 39(3) substituted (1.4.2005) by **Water Act 2003 (c. 37), ss. 41(5)(a), 105(3)**; S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)
- F14** Words in s. 39(3)(a) substituted (1.4.2005) by **Water Act 2003 (c. 37), ss. 41(5)(b), 105(3)**; S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)
- F15** Word in s. 39(3)(b)(i) repealed (1.4.2005) by **Water Act 2003 (c. 37), ss. 41(5)(c), 105(3), 101(2), Sch. 9 Pt. 2**; S.I. 2005/968, **art. 2(h)(n)(i)** (with savings in art. 4, Sch. 1, 2)
- F16** S. 39(3)(b)(iii) and preceding word inserted (1.4.2005) by **Water Act 2003 (c. 37), ss. 41(5)(c), 105(3)**; S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)
- F17** S. 39(4)-(8) inserted (1.4.2005) by **Water Act 2003 (c. 37), ss. 41(6), 105(3)**; S.I. 2005/968, **art. 2(h)** (with savings in art. 4, Sch. 1, 2)

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