



Water Act 2003

2003 CHAPTER 37

PART 2

NEW REGULATORY ARRANGEMENTS, ETC

Functions of the Council

43 General functions of the Council

(1) After section 27B of the WIA (which is inserted by section 35) there is inserted—

“General functions of the Council

27C The interests of consumers

(1) In considering the interests of consumers, the Council shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes;
- (d) individuals residing in rural areas; and
- (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are not eligible to be supplied by a licensed water supplier,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(2) For the purposes of subsection (1) above, premises are not eligible to be supplied by a licensed water supplier if—

- (a) they are household premises (as defined in section 17C above); or

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- (b) the total quantity of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection.

27D Acquisition and review of information

The Council shall have the function of obtaining and keeping under review—

- (a) information about consumer matters (including matters affecting consumers in different areas); and
- (b) information about the views of consumers on such matters (including the views of consumers in different areas).

27E Provision of advice and information to public authorities

- (1) The Council shall have the function of—
 - (a) making proposals, or providing advice and information, about consumer matters (including matters affecting consumers in different areas); and
 - (b) representing the views of consumers on such matters (including the views of consumers in different areas),
 to public authorities, companies holding an appointment under Chapter 1 of this Part, licensed water suppliers and other persons whose activities may affect the interests of consumers.
- (2) Subject to subsection (7) below, information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be disclosed if—
 - (a) the individual or body has consented to the disclosure;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to disclose any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
 - (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its disclosure;
 and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) Subject to subsection (7) below, the Council shall not in the exercise of its function under this section disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.

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- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) Subsections (2) to (5) above do not apply to a disclosure of information which is made to the Authority, the Secretary of State, the Assembly, the Competition Commission or any other public authority.
- (8) The disclosure by the Council of information in the exercise of its function under this section does not contravene section 206 below (restriction on disclosure of information).

27F Provision of information to consumers

- (1) The Council has the function of providing information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.
- (2) That function may be exercised by—
 - (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
 - (b) furnishing information to any consumer (whether in response to a request or otherwise).
- (3) Information may only be disclosed in the exercise of that function if it is information that is available to members of the public from some other source.
- (4) The Council shall maintain at least one office in each of England and Wales at which consumers may apply for information.

27G Power to publish information and advice about consumer matters

- (1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
 - (a) the individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

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- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
- (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication of information under this section does not contravene section 206 below (restriction on disclosure of information).”
- (2) Before section 30A of the WIA there is inserted—

“Further functions of Authority

30ZA Duty to consult Council

- (1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—
- (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
 - (b) the Authority considers that it would be clearly inappropriate to consult the Council.
- (2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

30ZB Copies of notices

Where the Authority is required by any provision of this Act to publish a notice or any other document, it shall send a copy of the document to the Council.”

44 Provision of information to the Council

After section 27G of the WIA (which is inserted by section 43) there is inserted—

“27H Provision of information to the Council

- (1) The Council may direct—
- (a) the Authority;

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- (b) a company holding an appointment under Chapter 1 of this Part; or
- (c) a licensed water supplier,

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.

- (2) A body to whom a direction under this section is given shall, if the information specified or described in the direction is in its possession, comply with the direction as soon as reasonably practicable.
- (3) Before giving a direction under this section and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body to whom the direction is given.
- (4) If a body to whom a direction under this section is given fails to comply with the direction it shall, if so required by the Council, give notice to the Council of the reasons for its failure.

27I Publication of notice of reasons

- (1) Subject to the following provisions of this section, the Council may publish a notice given to it under section 27H(4) above.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under subsection (1) above unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
 - (a) that individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
 - (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description

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which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.

- (7) The publication by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).

27J Provision of information by the Council

- (1) Any of—
- (a) the Authority;
 - (b) the Secretary of State; or
 - (c) the Assembly,
- may direct the Council to supply to him or it, in such form as he or it may reasonably specify, such information specified or described in the direction as he or it may require for the purpose of exercising his or its functions.
- (2) The Council shall, if the information specified or described in the direction is in its possession, comply with a direction under this section as soon as reasonably practicable.
- (3) Where the Council fails to comply with a direction given under subsection (1) above it must give to the person who gave the direction notice of its reason for the failure, and that person may publish that notice in such manner as he considers appropriate.
- (4) A person publishing a notice under this section shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

27K Sections 27H to 27J: supplementary

- (1) The Secretary of State may make regulations prescribing—
- (a) descriptions of information which a person to whom a direction is given under section 27H or 27J above may refuse to supply; or
 - (b) circumstances in which such a person may refuse to comply with a direction given under either of those sections.
- (2) The Council may, if no person is prescribed for the purpose under subsection (3) below, refer a failure by a company holding an appointment or a licensed water supplier to comply with a direction under section 27H above to the Authority.
- (3) The Secretary of State may make regulations for the purpose of enabling a failure to comply with a direction under section 27H or 27J above to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.
- (4) A person to whom such a failure is referred (whether under subsection (2) above or regulations under subsection (3) above) shall—
- (a) consider any representations made by either party;

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- (b) determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
 - (c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.
- (5) The duty of a company holding an appointment and a licensed water supplier to comply with an order under this section shall be enforceable by the Authority under section 18 above.
- (6) A notice under subsection (4) above may be published by either party to the reference.
- (7) Subsections (2) to (7) of section 27I above apply to the publication of a notice under this section as they apply to the publication of a notice given to the Council under section 27H(4) above.”

45 Provision of statistical information to consumers etc

- (1) After section 38A of the WIA there is inserted—

“38B Publication of statistical information about complaints

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of water undertakers or licensed water suppliers and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to water undertakers or licensed water suppliers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.”

- (2) After section 95A of the WIA there is inserted—

“95B Publication of statistical information about complaints

- (1) It shall be the duty of the Council to publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate relating to complaints made by consumers about any matter relating to the activities of sewerage undertakers and the handling of such complaints.
- (2) In subsection (1) above, “complaints” includes complaints made directly to sewerage undertakers (or anyone carrying on activities on their behalf) and complaints to the Authority, the Council, the Assembly or the Secretary of State.”

46 Consumer complaints

- (1) For section 29 of the WIA (duties of customer service committees) there is substituted—

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“29 Consumer complaints

- (1) This section applies to a complaint which any person (“the complainant”) has against a relevant undertaker or a licensed water supplier in relation to any matter connected with the functions of that undertaker or the services provided by that licensed water supplier.
- (2) Where a complaint to which this section applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsections (3) and (8) below) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (9) below.
- (3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under section 181 below, the Council shall, instead of investigating the matter to which it relates, refer the complaint to the Authority.
- (4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under section 18 or 22A above is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.
- (5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence, the Council shall refer the matter—
 - (a) to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales or to services provided by a licensed water supplier using the supply system of a water undertaker whose area is wholly or mainly in Wales; or
 - (b) to the Secretary of State, in any other case.
- (6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Act, the Council shall, if the complainant consents, refer the matter to the Authority.
- (7) A referral under subsection (6) above shall have effect for the purposes of section 30A below as if it were a referral by the complainant of a dispute for determination by the Authority.
- (8) The Council is not required to investigate any matter if it appears to the Council that—
 - (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker or the licensed water supplier;
 - (b) the relevant undertaker or the licensed water supplier has not been given a reasonable opportunity to deal with the complaint; or
 - (c) in a case mentioned in subsection (4) or (5) above or (where the complainant does not consent to the matter being referred to the Authority) subsection (6) above, it is inappropriate to do so.
- (9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the

complainant to the relevant undertaker or the licensed water supplier about anything to which the complaint relates.

- (10) After investigating a complaint the Council may make a report to the Authority, the Secretary of State or the Assembly.
- (11) A report under subsection (10) above may include information about—
- (a) any representations made by the Council under subsection (9) above; and
 - (b) the response of the relevant undertaker or the licensed water supplier to the complaint or any such representations.
- (12) No report under subsection (10) above or information about a complaint referred to the Council under this section, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority, the Secretary of State or the Assembly in the exercise of any power under this Act without the consent of the complainant.
- (13) Where a representation made to the Authority, the Secretary of State or the Assembly about any matter (other than a representation appearing to the person to whom it is made to be frivolous or vexatious) appears to that person—
- (a) to be about a matter which is or amounts to a complaint to which this section applies (other than one which, in the case of the Authority, it is its duty to investigate under section 181 below); and
 - (b) to have been made by or on behalf of the complainant,
- that person shall refer the matter to the Council.”
- (2) Section 30 of the WIA (duties of Director with respect to complaints) shall cease to have effect.

47 Investigations by the Council

After section 29 of the WIA there is inserted—

“29A Power of Council to investigate other matters

- (1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.
- (2) Before undertaking an investigation under this section the Council shall consult the Authority, the Secretary of State and the Assembly.
- (3) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the OFT, the Assembly or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.
- (4) Subject to subsection (5) below, the Council may—
- (a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and
 - (b) publish any such report in such manner as the Council thinks appropriate.

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- (5) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—
- (a) shall not be included in a report which is to be sent to any person under subsection (4)(a) above, unless one or more of paragraphs (a) to (c) of subsection (6) below applies; and
 - (b) shall be excluded from any such report which is to be published under subsection (4)(b) above, unless one or more of paragraphs (a) to (c) of subsection (7) below applies.
- (6) Information relating to a particular individual or body may be included in a report to be sent under subsection (4)(a) above if—
- (a) that individual or body has consented to the disclosure;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (7) Information relating to a particular individual or body may be included in a report to be published under subsection (4)(b) above if—
- (a) that individual or body has consented to the publication;
 - (b) it is information that is available to the public from some other source; or
 - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (8) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (6)(c) or (7)(c) above, the Council shall—
- (a) consult that individual or body; and
 - (b) have regard to any opinion expressed by the Authority as to the application of subsection (6)(c) or (7)(c) above to the information or as to the desirability or otherwise of its inclusion in the report;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (9) The Council shall not include in any report to be sent under subsection (4)(a) above or published under subsection (4)(b) above any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (10) In considering whether information relates to any matter as mentioned in subsection (9) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.”