

These notes refer to the Water Act 2003 (c.37) which received Royal Assent on 20th November 2003

WATER ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: New Regulatory Arrangements, Etc

Sections 34 to 38 and Schedules 1 to 3 Establishment, etc of new bodies

97. Sections 34 to 38 make express provision in relation to the Assembly.
98.

Section 34 and Schedule 1: Water Services Regulation Authority.

This section adds a new section 1A to the Water Industry Act and repeals Section 1 and Schedule 1A of that Act.

99. *New Section 1A* establishes the Water Services Regulation Authority, and provides that it is a body corporate that performs its functions on behalf of the Crown. The Welsh name for this Authority is specified as the Awdurdod Rheoleiddio Gwasanaethau D#r.
100. Subsection (2) inserts a new Schedule 1A into the Water Industry Act which sets out the provisions for the appointment and conditions of members of the Authority, stipulating that the Authority comprises a chairman and at least two other members, to be appointed by the Secretary of State in consultation with the Assembly. The Schedule also provides for the appointment of staff to serve the Authority, for proceedings, including the delegation of functions, within the Authority, and for a code of practice.
101. Subsection (3) abolishes the office of the Director General of Water Services.
102.

Section 35 and Schedule 2: Consumer Council for Water.

This section adds two new sections 27A and 27B and a new Schedule 3A to the Water Industry Act 1991.

103. The intention of this section (along with Schedule 2) is to establish a new independent Consumer Council for Water (CCW), which may be known as ‘Cyngor Defnyddwyr D#r’ in Welsh.
104. Subsection (1) adds new sections 27A and 27B to the WIA. *New section 27A* creates the CCW as a body corporate and requires the Council to allocate undertakers to regional committees.
105. Subsections (4) to (6) in new section 27A give the Secretary of State and the Assembly (for undertakers wholly or mainly operating in Wales) power to direct the allocation of undertakers to regional committees for a six month period. Thereafter the Council may establish or abolish a regional committee, or alter an undertaker’s allocation, only with the consent of the Secretary of State or Assembly.

106. Subsections (9) to (13) in new section 27A set out the remit of regional committees and provides definitions of ‘consumers’, ‘the interests of consumers’ and ‘consumer matter’ in relation to the Council’s responsibilities. Broadly, the interests of consumers mean the interests of existing and future consumers of water and sewerage services (via the public networks). Subsection (12) adds a duty for the Council, to exercise and perform its duties in a manner that is best calculated to contribute to the achievement of sustainable development.
107. *New section 27B* requires the Council to make arrangements with the Authority, the Assembly and the Secretary of State to secure co-operation and to exchange information, and for consistent treatment of matters of concern. Arrangements are to be set out in a Memorandum of Understanding and are to be kept under review by the parties. Every memorandum should be circulated to the other bodies, and the Secretary of State is required to lay a copy of each memorandum before each House of Parliament.
108. Subsection (2) adds Schedule 3A to the WIA. This provides for the internal operation of the Council, including membership of the Council and the terms of appointment and remuneration of members, staff, annual reports to the Secretary of State, financial provisions and accounts, and committees, including regional committees.
109. Subsection (3) abolishes the existing customer service committees.
- 110.

Section 36: Transfer to Authority and Council of functions, property etc.

This section (along with Schedule 3) transfers the functions of the Director to the Authority and effectively removes all references in the Water Industry Act to the Director General of Water Services (or “the Director”), and replaces them with Water Services Regulation Authority (or “the Authority”). It also allows the Secretary of State to make transfer schemes for the transfer of property, rights and liabilities from the Director to the Authority or to the Council.

111.

Section 37: Conditions relating to costs of water regulation.

This section gives the Authority power to modify conditions of appointment of a company as a water or sewerage undertaker to provide for the recovery of the expenses of the Council, the expenses incurred in setting it up and the expenses incurred in abolishing the existing customer service committees.

112. Subsection (6) requires the Authority to consult water companies before making any such changes in their appointments.
113. Subsection (7) sets out that this power is only exercisable within two years of commencement.
114. Subsection (8) states that the Secretary of State may (after consulting the Assembly) issue directions to the Authority on the inclusion of payment conditions in the conditions of appointment.

115.

Section 38: Forward work programmes and annual reports.

This section adds two new sections (192A and 192B) to the WIA and repeals sections 193 and 194 of the same Act.

116. *New section 192A* requires both the Authority and, separately, the Council to publish before each financial year a forward work programme. The forward work programmes should contain a general description of projects apart from routine activities, which the Council or Authority plans to undertake during the year, including associated objectives

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and an estimate of the overall expenditure for the year. The Authority and the Council must both consult on drafts of the programmes.

117. *New section 192B* requires the Authority to produce, for the Secretary of State, an annual report on its activities, and those of the Competition Commission in respect of any references made by it, during the previous financial year. The report shall include a general survey of development of matters falling within the scope of its functions, a report on progress of projects described in the forward work programme for that year, a summary of orders and penalties imposed and a report on any matter which it is required to report on as a result of a requirement by the Secretary of State or the Assembly.
118. The Secretary of State shall lay the report before each House of Parliament and publish it. A copy of each report must be sent to the Assembly, Council and Drinking Water Inspectorate.
119. Subsection (8) in new section 192B provides that the Authority shall have regard to excluding information which might be prejudicial to the interests of an individual or body.