

*Status: Point in time view as at 01/11/2016.*

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## SCHEDULES

### SCHEDULE 11

Section 91(5)

#### ORDERS UNDER SECTION 91: FURTHER PROVISION

##### *Introductory*

- 1 (1) The provision that may be made by an order under section 91 (“a section 91 order”) includes such provision as is mentioned in this Schedule.
- (2) Nothing in this Schedule affects the generality of section 91.

##### *Changes in water supply licensing*

- 2 (1) A section 91 order may make provision in connection with the introduction of new water supply licences.
- (2) A section 91 order may in particular—
  - (a) make provision for old water supply licences to continue in effect, subject to provision made by a qualifying scheme;
  - (b) make provision about the granting of a new water supply licence on application made by the holder of an old water supply licence.
- (3) A qualifying scheme is a scheme that—
  - (a) is made by the Water Services Regulation Authority, and
  - (b) contains such provision as is described in sub-paragraph (4).
- (4) The provision mentioned in sub-paragraph (3)(b) is—
  - (a) provision for the revocation of all old water supply licences—
    - (i) on the first day on which it would be possible for a new water supply licence to come into effect, or
    - (ii) in accordance with arrangements in the scheme and before a day specified in or determined under the scheme,
  - (b) provision for compensation to be paid by the Water Services Regulation Authority in connection with the revocation under the scheme of an old water supply licence,
  - (c) provision, in a case where the scheme allows a holder's old water supply licence and new water supply licence to have effect at the same time, for preventing the holder supplying water to premises in reliance on the old water supply licence where—
    - (i) the premises supplied are the premises of a person who was not a customer of the holder immediately before the grant of the new licence, and
    - (ii) the premises could be supplied with water in reliance on the new water supply licence,

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- (d) provision for compensation to be paid by the Water Services Regulation Authority in connection with the restriction imposed on an old water supply licence under paragraph (c),
  - (e) provision about the determination of—
    - (i) claims for compensation payable under the scheme, and
    - (ii) appeals from the determination of such claims, and
  - (f) provision satisfying such other requirements as may be specified in a section 91 order, including requirements about the persons who may claim compensation, the measure of compensation and matters by reference to which compensation may be reduced.
- (5) Requirements imposed under sub-paragraph (4)(f) may allow the scheme to make provision by virtue of which the compensation payable in a particular case may be nil.
- (6) A qualifying scheme may include provision about—
- (a) the making of claims for compensation;
  - (b) the matters to be proved by a claimant.
- (7) Sub-paragraphs (4) to (6) are not exhaustive of what may be included in a qualifying scheme.
- (8) A section 91 order may make provision for a relevant person specified in the order, or appointed by the Secretary of State, to determine—
- (a) claims for compensation payable under a qualifying scheme;
  - (b) appeals from the determinations of such claims.
- (9) In sub-paragraph (8) “relevant person” means—
- (a) the Water Services Regulation Authority, except in relation to appeals from the determination of claims for compensation,
  - (b) the Competition and Markets Authority, or
  - (c) any other public authority (within the meaning of section 6 of the Human Rights Act 1998).
- (10) A section 91 order may provide for functions of the Competition and Markets Authority (“the CMA”) relating to compensation payable under a qualifying scheme to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

*Modification of conditions of old water supply licences*

- 3
- (1) Where a section 91 order makes provision for old water supply licences to continue in effect, that provision may include provision for applying new sections 17I to 17R to old water supply licences, with such modifications as appear to the Secretary of State to be appropriate.
  - (2) Provision under sub-paragraph (1) may include provision for treating a reference to a new water supply licence as including a reference to an old water supply licence.
  - (3) Provision under sub-paragraph (1) may include provision for treating—
    - (a) a reference to a standard condition of a new water supply licence as including a reference to a standard condition of an old water supply licence, if the two conditions are in, or as nearly as may be in, the same terms;

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- (b) a reference to a standard condition of a new water supply licence giving the holder a new retail authorisation as including a reference to a standard condition of an old water supply licence giving the holder a retail authorisation, if the two conditions are in, or as nearly as may be in, the same terms;
- (c) a reference to a standard condition of a new water supply licence giving the holder a new restricted retail authorisation as including a reference to a standard condition of an old water supply licence giving the holder a retail authorisation, if the two conditions are in, or as nearly as may be in, the same terms;
- (d) a reference to a standard condition of a new water supply licence giving the holder a new wholesale authorisation as including a reference to a standard condition of an old water supply licence giving the holder a supplementary authorisation, if the two conditions are in, or as nearly as may be in, the same terms.
- (e) a reference to a standard condition of a new water supply licence giving the holder a new supplementary authorisation as including a reference to a standard condition of an old water supply licence giving the holder a supplementary authorisation, if the two conditions are in, or as nearly as may be in, the same terms.

*Changes in water supply licensing: Wales*

- 4
- (1) A section 91 order may make provision in connection with the extension of new retail authorisations and new wholesale authorisations to the use of supply systems of water undertakers whose areas are wholly or mainly in Wales, where that extension takes place after the introduction of new water supply licences.
  - (2) A section 91 order may in particular include provision for or in relation to the payment by the Water Services Regulation Authority of compensation to any person holding a new water supply licence who—
    - (a) following the coming into force of any provision of this Act, is unable to carry on activities that had previously been authorised by a new restricted retail authorisation, or a new restricted retail authorisation and a new supplementary authorisation, given by the licence as a result of—
      - (i) a new retail authorisation or a new wholesale authorisation or both having been required in respect of them, and
      - (ii) the person's licence not having been varied to add a new retail authorisation or a new wholesale authorisation or both, because the person did not apply to vary the licence, or did not apply to add the appropriate authorisation or authorisations, or because the person's application to vary the licence was refused or granted only as to one authorisation, and
    - (b) has suffered loss or damage as a result of not having a licence that enables the person to carry on all those activities.

*Introduction of sewerage licensing*

- 5
- (1) A section 91 order may make provision in connection with the introduction of sewerage licences.

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- (2) A section 91 order may in particular include provision for or in relation to the payment by the Water Services Regulation Authority of compensation to any person who—
- (a) before 31 March 2014 was carrying on any activities in relation to the sewerage system of a sewerage undertaker,
  - (b) following the coming into force of any provision of this Act—
    - (i) is unable to continue to carry on those activities as a result of their having been prohibited,
    - (ii) is unable to continue to carry on those activities as a result of a sewerage licence having been required in respect of them, and the person's not having applied for, or the person's having been refused, a sewerage licence, or
    - (iii) is unable to continue to carry on those activities in the same manner as a result of the person's having been granted a sewerage licence the effect of which is to restrict the carrying on of the activities, and
  - (c) has suffered loss or damage as a result of—
    - (i) those activities having been prohibited,
    - (ii) a sewerage licence not having been granted, or
    - (iii) those activities having been restricted.

*New retail authorisations and the threshold requirement*

- 6 (1) A section 91 order may make provision for the threshold requirement (see section 17D of the Water Industry Act 1991) to have effect for a relevant period in relation to the supply of water to any premises, where the supply to those premises is made in connection with the introduction of water into the supply system of a water undertaker under a new wholesale authorisation.
- (2) Provision under sub-paragraph (1) may in particular include such modifications of Schedule 2A to the Water Industry Act 1991 (forms of authorisations given by water supply licences) as appear to the Secretary of State to be appropriate.

*Modifications relating to new wholesale authorisations*

- 7 (1) Where a section 91 order makes provision as regards new wholesale authorisations, that provision may include provision for provisions of the Water Industry Act 1991 to have effect for a relevant period with such modifications as appear to the Secretary of State to be appropriate.
- (2) Provision under sub-paragraph (1) may include provision for applying old provisions of the Water Industry Act 1991 with such modifications as appear to the Secretary of State to be appropriate.
- (3) Provision under sub-paragraph (2) may in particular provide for the application of provision in old section 66D(2) to (8) for the purpose of determining—
- (a) the period for which, and
  - (b) the terms and conditions on which,
- a water undertaker's duties under new section 66B or 66C are to be performed.
- (4) Provision under sub-paragraph (2) may in particular provide for the application of provision in old section 66E for the purpose of determining charges payable in

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respect of the performance of a water undertaker's duties under new section 66B or 66C.

- (5) Provision under sub-paragraph (1) may in particular make provision about the interpretation of references to a water undertaker's supply system, including in particular provision for such references to be treated as references to the supply system of a water undertaker as it is described in old section 17B.
- (6) Provision under sub-paragraph (1) may provide for modifications to have effect for different relevant periods.
- (7) Provision under sub-paragraph (1) may make provision—
  - (a) in relation to new wholesale authorisations that authorise the introduction of water into the supply system of a water undertaker whose area is wholly or mainly in England,
  - (b) in relation to new wholesale authorisations that authorise the introduction of water into the supply system of a water undertaker whose area is wholly or mainly in Wales, or
  - (c) in relation to new wholesale authorisations that authorise the introduction of water into the supply system of any water undertaker.
- (8) Before making provision falling within sub-paragraph (7)(b) or (c), the Secretary of State must consult the Welsh Ministers.

*Modifications relating to new supplementary authorisations*

- 8 (1) Where a section 91 order makes provision as regards new supplementary authorisations, that provision may include provision for provisions of the Water Industry Act 1991 to have effect for a relevant period with such modifications as appear to the Secretary of State to be appropriate.
- (2) Provision under sub-paragraph (1) may include provision for applying old provisions of the Water Industry Act 1991 with such modifications as appear to the Secretary of State to be appropriate.
- (3) Provision under sub-paragraph (2) may in particular provide for the application of provision in old section 66D(2) to (8) for the purpose of determining—
  - (a) the period for which, and
  - (b) the terms and conditions on which,a water undertaker's duties under new section 66B or 66C are to be performed.
- (4) Provision under sub-paragraph (2) may in particular provide for the application of provision in old section 66E for the purpose of determining charges payable in respect of the performance of a water undertaker's duties under new section 66B or 66C.
- (5) Provision under sub-paragraph (1) may provide for modifications to have effect for different relevant periods.
- (6) Before making provision under this paragraph, the Secretary of State must consult the Welsh Ministers.

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*Old section 66D agreements and new water supply licences*

- 9 (1) A section 91 order may include provision for securing that an old section 66D agreement continues to have effect in a case where the person who entered into the agreement as the holder of an old water supply licence is granted a new water supply licence.
- (2) Provision under sub-paragraph (1) may provide for the modification of the agreement and may in particular include—
- (a) provision for treating a reference in the agreement to the old water supply licence as a reference to the new water supply licence;
  - (b) provision for treating a reference in the agreement to an authorisation given under the old licence as a reference to an authorisation or authorisations given under the new licence;
  - (c) provision for the Water Services Regulation Authority to vary the agreement by order, on application by a party to the agreement.
- (3) Before making provision under this paragraph in relation to old section 66D agreements to which a water undertaker whose area is wholly or mainly in Wales is party, the Secretary of State must consult the Welsh Ministers.

*New section 66E and old section 66D agreements*

- 10 (1) A section 91 order may provide for new section 66E (rules about charges that may be imposed under a section 66D agreement) to have effect as regards—
- (a) charges payable under old section 66D agreements, or
  - (b) specified descriptions of charges payable under old section 66D agreements.
- (2) Provision under sub-paragraph (1) may include provision for making such modifications of—
- (a) new sections 66E to 66ED, and
  - (b) old sections 66A to 66D and 66F,
- as appear to the Secretary of State to be appropriate.
- (3) Provision under sub-paragraph (1) may provide for the modification of old section 66D agreements and may in particular include provision for the Water Services Regulation Authority to vary the agreement by order, on application by a party to the agreement.
- (4) Before making provision under this paragraph in relation to the supply of water using the supply system of a water undertaker whose area is wholly or mainly in Wales, the Secretary of State must consult the Welsh Ministers.

*Interpretation*

- 11 (1) In this Schedule—
- “new restricted retail authorisation” means a restricted retail authorisation given by a new water supply licence;
- “new retail authorisation” means a retail authorisation given by a new water supply licence;
- “new supplementary authorisation” means a supplementary authorisation given by a new water supply licence;

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“new water supply licence” means a water supply licence granted under new section 17A;

“new wholesale authorisation” means a wholesale authorisation given by a new water supply licence;

“old section 66D agreement” means such agreement or determination as is mentioned in old section 66D(3);

“old water supply licence” means a water supply licence granted under old section 17A;

“sewerage licence” means a sewerage licence granted under section 17BA of the Water Industry Act 1991.

- (2) In this Schedule “relevant period” means—
- (a) a period specified in or determined in accordance with a section 91 order, or
  - (b) a period that—
    - (i) begins at a time specified in or determined in accordance with a section 91 order, and
    - (ii) ends at such time as the Secretary of State may specify by order.
- (3) Before making provision under sub-paragraph (2)(a) or (b)(i) or making an order under sub-paragraph (2)(b)(ii) that affects provision to which paragraph 7(8), 8(6) or 10(4) applies, the Secretary of State must consult the Welsh Ministers.
- (4) In this Schedule a reference to an old provision is a reference to a provision of the Water Industry Act 1991 as it has effect before the coming into force of an amendment or repeal of that provision made by this Act.
- (5) In this Schedule a reference to a new provision is a reference to—
- (a) a provision of the Water Industry Act 1991 after an amendment of that provision made by this Act has come into force, or
  - (b) a provision of the Water Industry Act 1991 inserted by this Act.

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