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## SCHEDULES

### SCHEDULE 2

Section 1

#### WATER UNDERTAKERS' DUTIES AS REGARDS WATER SUPPLY LICENSEES

VALID FROM 01/04/2017

1 For sections 66A to 66C of the Water Industry Act 1991, and the Chapter heading and italic heading preceding section 66A, there is substituted—

“Supply duties etc: water supply licensees

*Duties of undertakers to supply water supply licensees etc*

#### **66A Use of water undertaker's supply system**

- (1) This section applies where a water supply licensee with a retail authorisation (“L”) requests a water undertaker to permit the use of the undertaker's supply system for the purpose of supplying water to premises that—
  - (a) L is to supply in accordance with L's retail authorisation, and
  - (b) are in the area of the undertaker.
- (2) This section also applies where a water supply licensee with a restricted retail authorisation (“R”) requests a water undertaker to permit the use of the undertaker's supply system for the purpose of supplying water to premises that—
  - (a) R is to supply in accordance with R's restricted retail authorisation, and
  - (b) are in the area of the undertaker.
- (3) Where this section applies, the undertaker must in accordance with a section 66D agreement take such steps—
  - (a) for the purpose of connecting the premises in question with the undertaker's supply system, or
  - (b) in respect of that system,as may be provided for in that agreement in order to enable the requested use of the undertaker's supply system.
- (4) A water undertaker is not required by this section to permit the use of its supply system, or to take any steps to enable its use, if the first or second ground applies.
- (5) The first ground is that—
  - (a) in the case of a request under subsection (1), the water supply licensee has not secured by means of—

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- (i) a request under section 66AA(1) made by the licensee,
    - (ii) a request under section 66B(1) or 66C(1), (2) or (3) made by the licensee or another water supply licensee, or
    - (iii) a combination of such requests,

a supply of water, or the introduction of a supply of water, in connection with which the premises in question are to be supplied;
  - (b) in the case of a request under subsection (2), the water supply licensee has not secured by means of—
    - (i) a request under section 66AA(2), 66B(2) or (3) or 66C(4), or
    - (ii) a combination of such requests,

a supply of water, or the introduction of a supply of water, in connection with which the premises in question are to be supplied.
- (6) The second ground is that there is, in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises in question, or
  - (b) the use of water in those premises,
- a contravention of such of the requirements of regulations under section 74 as are prescribed for the purposes of this subsection.
- (7) Where—
- (a) a request has been made by a water supply licensee for the purposes of subsection (1) or (2), and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 66D agreement provides for such liability as regards those steps.
- (8) For the purposes of this section and sections 66AA to 66C—
- (a) premises which are outside a water undertaker's area are to be treated as being within that area if they are supplied with water using the undertaker's supply system, and
  - (b) any pipes of the water undertaker which are used for the purpose of supplying premises as mentioned in paragraph (a) are to be treated as being part of the undertaker's supply system (if they would not otherwise be part of it).
- (9) In this section and sections 66AA to 66C—
- (a) “prescribed” means, in relation to a water undertaker whose area is wholly or mainly in Wales, prescribed by regulations made by the Welsh Ministers by statutory instrument, which is subject to annulment in pursuance of a resolution of the Assembly;

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- (b) a reference to the supply system of a water undertaker is to be construed in accordance with section 17B;
- (c) references to a retail authorisation or a restricted retail authorisation are to be construed in accordance with Schedule 2A.

#### **66AA Water supply from water undertaker**

- (1) This section applies where a water supply licensee with a retail authorisation (“L”) requests a water undertaker to provide L with a supply of water for the purpose of supplying water to premises that—
  - (a) L is to supply in accordance with L's retail authorisation, and
  - (b) are in the area of the undertaker.
- (2) This section also applies where a water supply licensee with a restricted retail authorisation (“R”) requests a water undertaker to provide R with a supply of water for the purpose of supplying water to premises that—
  - (a) R is to supply in accordance with R's restricted retail authorisation, and
  - (b) are in the area of the undertaker.
- (3) Where this section applies, the undertaker must in accordance with a section 66D agreement—
  - (a) take such steps in respect of the undertaker's supply system as may be provided for in that agreement in order to enable the use of the undertaker's supply system for the purpose in subsection (1) or, as the case may be, subsection (2), and
  - (b) having taken such steps, provide the requested supply of water.
- (4) A water undertaker is not required by this section to provide a supply of water if both of the first and second grounds apply.
- (5) The first ground is that—
  - (a) the premises to be supplied by L or, as the case may be, R do not consist in the whole or any part of a building, or
  - (b) the supply to be made by L or, as the case may be, R to those premises is for purposes other than domestic purposes.
- (6) The second ground is that provision of a supply of water by the water undertaker would—
  - (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (7) Where—
  - (a) a request has been made by a water supply licensee for the purposes of subsection (1) or (2), and

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- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,

the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 66D agreement provides for such liability as regards those steps.

### **66B Introduction of water into water undertaker's supply system**

- (1) This section applies where—
- (a) a water supply licensee with a wholesale authorisation (“L”) requests a water undertaker to permit L to introduce water into the undertaker's supply system, with a view to the use of that system, in connection with that introduction of water, to supply water to particular premises in accordance with a retail authorisation (whether L's or another's), and
  - (b) the premises in issue are in the area of the undertaker.
- (2) This section also applies where—
- (a) a water supply licensee with a supplementary authorisation (“R1”) requests a water undertaker to permit R1 to introduce water into the undertaker's supply system, with a view to the use of that system, in connection with that introduction of water, to supply water to particular premises in accordance with R1's restricted retail authorisation, and
  - (b) the premises in issue are in the area of the undertaker.
- (3) This section also applies where—
- (a) a water undertaker agrees to permit a water supply licensee with a supplementary authorisation (“R2”) to introduce water into the undertaker's treatment works,
  - (b) in connection with that introduction, R2 requests the undertaker to permit R2 to introduce water into the undertaker's supply system, with a view to the use of that system to supply water to particular premises in accordance with R2's restricted retail authorisation, and
  - (c) the premises in issue are in the area of the undertaker.
- (4) Where this section applies, the undertaker must in accordance with a section 66D agreement—
- (a) in a case falling within subsection (1), take such steps—
    - (i) for the purpose of connecting L's source of water with the undertaker's supply system, or
    - (ii) in respect of the undertaker's supply system,
 as may be provided for in that agreement in order to enable L to make the requested introduction of water into the supply system;
  - (b) in a case falling within subsection (2), take such steps—

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- (i) for the purpose of connecting R1's treatment works with the undertaker's supply system,
    - (ii) for the purpose of connecting with the undertaker's supply system any source used by R1 for the purpose of supplying water other than for domestic or food purposes, or
    - (iii) in respect of the undertaker's supply system,as may be provided for in that agreement in order to enable R1 to make the requested introduction of water into the supply system;
  - (c) in a case falling within subsection (3), take such steps in respect of the undertaker's supply system as may be provided for in that agreement in order to enable R2 to make the requested introduction of water into the supply system;
  - (d) having taken steps under paragraph (a), (b) or (c) (as the case may be), permit the requested introduction of water into that supply system.
- (5) A water undertaker is not required by this section to permit the introduction of water into its supply system, or to take any steps to enable such an introduction of water, if permitting the introduction of water into the undertaker's supply system would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (6) Where—
- (a) a request has been made by a water supply licensee for the purposes of subsection (1), (2) or (3), and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 66D agreement provides for such liability as regards those steps.
- (7) In this section “treatment works” means—
- (a) in relation to a water undertaker whose area is wholly or mainly in Wales, the works designated as treatment works by the Secretary of State for the purposes of section 17B(6);
  - (b) in relation to a water supply licensee, the works designated from time to time by the Welsh Ministers as treatment works for the purposes of this paragraph.
- (8) A list of any works designated for the purposes of subsection (7)(b) must be published from time to time by the Welsh Ministers in such manner as

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the Welsh Ministers consider appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.

- (9) A pipe laid because of subsection (4)(a)(i) or (b)(i) or (ii) is to be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
- (10) In this section and section 66C—
- (a) a reference to a wholesale authorisation is to be construed in accordance with Schedule 2A;
  - (b) a reference to a supplementary authorisation is to be construed in accordance with Schedule 2A.

### **66C Introduction of water provided by secondary water undertaker**

- (1) This section applies where a water supply licensee with a wholesale authorisation (“L1”)—
- (a) requests a water undertaker other than L1's primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that water may be supplied to particular premises, using the primary water undertaker's supply system and in accordance with a retail authorisation (whether L1's or another's), and
  - (b) requests L1's primary water undertaker to permit L1 to introduce that water into the primary water undertaker's supply system,
- and the premises in issue are in the area of the primary water undertaker.

A request under paragraph (a) may only be made to a water undertaker whose area is wholly or mainly in England.

- (2) This section also applies where a water supply licensee with a wholesale authorisation (“L2”)—
- (a) requests a water undertaker whose area is wholly or mainly in Wales and which is not L2's primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that L2 may supply water to particular premises, using the primary water undertaker's supply system and in accordance with L2's retail authorisation so far as that authorisation relates to L2's customers, and
  - (b) requests L2's primary water undertaker to permit L2 to introduce that water into the primary water undertaker's supply system,
- and the premises in issue are in the area of the primary water undertaker.
- (3) This section also applies where a water supply licensee with a wholesale authorisation (“L3”)—
- (a) agrees with a water undertaker whose area is wholly or mainly in Wales and which is not L3's primary undertaker (the “secondary water undertaker”) for the secondary water undertaker to provide a supply of water so that water may be supplied to particular premises, using the primary water undertaker's supply system and in accordance with—
    - (i) L3's retail authorisation except so far as that authorisation relates to L3's customers, or

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- (ii) a retail authorisation other than L3's, and
  - (b) requests L3's primary water undertaker to permit L3 to introduce that water into the primary water undertaker's supply system, and the premises in issue are in the area of the primary water undertaker.
- (4) This section also applies where a water supply licensee with a supplementary authorisation (“R”)—
  - (a) requests a water undertaker other than R's primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that R may supply water to particular premises, using the primary water undertaker's supply system and in accordance with R's restricted retail authorisation, and
  - (b) requests R's primary water undertaker to permit R to introduce that water into the primary water undertaker's supply system, and the premises in issue are in the area of the primary water undertaker.

A request under paragraph (a) may be made to a water undertaker whose area is wholly or mainly in England or Wales.
- (5) Where this section applies by virtue of subsection (1), (2) or (4), the secondary water undertaker must in accordance with a section 66D agreement—
  - (a) take such steps in respect of its supply system as may be provided for in that agreement in order to enable it to provide the requested supply, and
  - (b) having taken such steps, provide that supply.
- (6) Where this section applies, the primary water undertaker must in accordance with a section 66D agreement—
  - (a) take such steps—
    - (i) for the purpose of connecting the secondary water undertaker's supply system with the primary water undertaker's supply system, or
    - (ii) in respect of its supply system, as may be provided for in that agreement in order to enable L1, L2, L3 or R to make the requested introduction of water into the primary undertaker's supply system, and
  - (b) having taken such steps, permit the requested introduction.
- (7) A secondary water undertaker is not required by this section to provide a supply of water to L1, L2 or R if providing the supply of water would—
  - (a) require the secondary undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (8) A primary water undertaker is not required by this section to permit the introduction of water into its supply system, or to take any steps to enable

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such an introduction of water, if permitting the introduction of a supply of water would—

- (a) require the primary undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (9) Where—
- (a) a request has been made by a water supply licensee to a water undertaker for the purposes of subsection (1), (2), (3) or (4), and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 66D agreement provides for such liability as regards those steps.
- (10) A pipe laid because of subsection (6)(a)(i) is to be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
- (11) For the purposes of this section, a water undertaker is the primary water undertaker of a water supply licensee if the undertaker's supply system is to be used for the purpose of making the supply to the premises mentioned in subsection (1), (2), (3) or (4).”

VALID FROM 01/04/2017

2 After section 66C (substituted by paragraph 1) there is inserted—

**“66CA Determinations by Authority**

- (1) The Authority may determine, in a case referred to it by a water supply licensee, whether any condition specified in the following provisions is satisfied—
  - (a) section 66A(5) and (6);
  - (b) section 66AA(5) and (6);
  - (c) section 66B(5);
  - (d) section 66C(7) and (8).
- (2) Before the Authority determines whether a condition specified in section 66B(5) is satisfied, it must consult the Secretary of State.
- (3) If a determination as to a condition specified in section 66B(5) relates to the introduction of water into the supply system of a water undertaker whose area is wholly or mainly in Wales, the Authority must consult the Welsh Ministers, not the Secretary of State.



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- (4) Before the Authority determines whether a condition specified in section 66C(7) or (8) is satisfied, it must consult the Secretary of State and the appropriate agency.
- (5) If the case in which a determination as to a condition specified in section 66C(7) or (8) is made relates to—
- (a) the supply of water by a water undertaker whose area is wholly or mainly in Wales, and
  - (b) the introduction of water into the supply system of a water undertaker whose area is wholly or mainly in Wales,
- the Authority must consult the Welsh Ministers, not the Secretary of State.
- (6) If the case in which a determination as to a condition specified in section 66C(7) or (8) is made relates to the supply of water by one water undertaker, and the introduction of water into the supply system of another water undertaker, and only one of those undertakers has an area wholly or mainly in Wales, the Authority must consult the Welsh Ministers as well as the Secretary of State.
- (7) In subsection (4), “the appropriate agency”, in relation to a determination as to a condition specified in section 66C(7) or (8) relating to the supply of water by one water undertaker, and the introduction of water into the supply system of another water undertaker means—
- (a) the Environment Agency, in a case where the areas of both undertakers are wholly in England;
  - (b) the NRBW, in a case where the areas of both undertakers are wholly in Wales;
  - (c) both the Environment Agency and the NRBW, in any other case.”

VALID FROM 01/04/2017

3 For section 66D of the Water Industry Act 1991 (determinations and agreements) there is substituted—

**“66D Agreements as to duties under sections 66A to 66C**

- (1) On the application of—
- (a) a water supply licensee that has made a request under sections 66A to 66C, or
  - (b) a water undertaker to which such a request has been made,
- the Authority may by order require a water undertaker to perform the duty in question under sections 66A to 66C, for such period and on such terms and conditions as may be specified in the order.
- (2) The Authority may make an order under subsection (1) only if—
- (a) in the case of an application relating to a duty under section 66A, 66AA, 66B or 66C, it appears to the Authority that the water undertaker is required to perform that duty under that section, or

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- (b) in the case of an application relating to duties under section 66C, it appears to the Authority that both water undertakers in question are required to perform duties under that section, and it is satisfied that the parties cannot reach agreement within a reasonable time.
- (3) An order under subsection (1) has effect as an agreement between—
  - (a) the water supply licensee, and
  - (b) the water undertaker required to perform the duty in question.
- (4) On the application of a party to a section 66D agreement, and if the Authority is satisfied that the parties cannot reach agreement on the variation or termination of the agreement within a reasonable time, the Authority may by order vary or terminate the agreement.
- (5) If an order under subsection (4) is made in relation to a section 66D agreement, the agreement—
  - (a) has effect subject to the provision made by the order, or
  - (b) ceases to have effect, as the case may be.
- (6) An order under subsection (4) may require one party to the agreement to pay compensation to the other.
- (7) Neither the CMA nor the Authority may exercise, in respect of an agreement for the performance of a duty under sections 66A to 66C by a water undertaker, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
  - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement for the performance of a duty under sections 66A to 66C by a water undertaker, and
  - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (9) In this Chapter a reference to a section 66D agreement is a reference to—
  - (a) an agreement for the performance of a duty under sections 66A to 66C by a water undertaker, or
  - (b) an order deemed to be such an agreement under subsection (3), or
  - (c) an agreement varied by order under subsection (4).”

4 After section 66D of the Water Industry Act 1991 (as substituted by paragraph 3) there is inserted—

**“66DA Codes in respect of section 66D agreements**

- (1) The Authority may issue one or more codes in respect of section 66D agreements.

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- (2) A code may make provision about—
  - (a) procedures in connection with making a section 66D agreement;
  - (b) procedures in connection with varying or terminating a section 66D agreement;
  - (c) the terms and conditions of a section 66D agreement, including terms as to the duration of such an agreement;
  - (d) principles for determining the terms and conditions that should or should not be incorporated into a section 66D agreement.
- (3) A code may make provision about the steps to be taken by the Authority in determining for the purposes of section 66D(2) whether a water undertaker is, in the particular case, required to perform a duty under sections 66A to 66C.
- (4) If the Authority considers that a water undertaker or a water supply licensee is not acting as required by a code, the Authority may give the undertaker or the licensee a direction to do, or not to do, a thing specified in the direction.
- (5) The Authority may not give a direction under subsection (4) requiring a person to enter into, vary or terminate an agreement.
- (6) It is the duty of a water undertaker or a water supply licensee to comply with a direction under subsection (4), and this duty is enforceable by the Authority under section 18.
- (7) A code may make—
  - (a) different provision for different persons or descriptions of person;
  - (b) different provision for different duties under sections 66A to 66C.
- (8) The Authority may from time to time revise a code issued under this section and issue a revised code.
- (9) A revised code may include provision for applying any of its revisions to section 66D agreements made before the revised code comes into effect.

#### **66DB Codes under section 66DA: procedure**

- (1) Before issuing a code under section 66DA, the Authority must—
  - (a) prepare a draft of the proposed code under section 66DA;
  - (b) consult persons in accordance with subsections (2) to (4).
- (2) If the proposed code relates to section 66D agreements made with water undertakers whose areas are wholly or mainly in England, the Authority must consult the following about the proposed code—
  - (a) the Secretary of State;
  - (b) the Chief Inspector of Drinking Water;
  - (c) the appropriate agency;
  - (d) the Council;
  - (e) any relevant undertakers likely to be affected by the proposed code;
  - (f) any water supply licensees likely to be affected by the proposed code;
  - (g) such other persons as the Authority thinks appropriate.

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- (3) If the proposed code relates to section 66D agreements made with water undertakers whose areas are wholly or mainly in Wales, the Authority must consult the following about the proposed code—
- (a) the Welsh Ministers;
  - (b) the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies;
  - (c) the appropriate agency;
  - (d) the Council;
  - (e) any relevant undertakers likely to be affected by the proposed code;
  - (f) any water supply licensees likely to be affected by the proposed code;
  - (g) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the proposed code.
- (5) Before a code under section 66DA prepared by the Authority is issued, the Minister may direct the Authority—
- (a) not to issue the code, or
  - (b) to issue the code with specified modifications.
- (6) Subsection (5) is subject to subsections (8) and (9).
- (7) In subsection (5) “the Minister” means—
- (a) the Secretary of State, so far as a code prepared by the Authority relates to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as a code prepared by the Authority relates to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as a code prepared by the Authority relates to section 66D agreements not falling within paragraph (a) or (b).
- (8) If the power under subsection (5) is exercised to give a direction in respect of such section 66D agreements as are referred to in paragraph (a), (b) or (c) of subsection (7), it may not be exercised again in respect of such section 66D agreements as are referred to in that paragraph.
- (9) If the power under subsection (5) to give a direction in respect of such section 66D agreements as are referred to in paragraph (a), (b) or (c) of subsection (7) is not exercised on the first occasion on which it may be so exercised, it may not be exercised in respect of such section 66D agreements as are referred to in that paragraph on a later occasion.
- (10) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and a code prepared by the Authority in relation to which a direction may be given may not be issued before that period of 28 days has expired.
- (11) In this section “the appropriate agency” means—
- (a) the Environment Agency, in relation to section 66D agreements made with water undertakers whose areas are wholly in England;

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- (b) the NRBW, in relation to section 66D agreements made with water undertakers whose areas are wholly in Wales;
- (c) both the Environment Agency and the NRBW, in relation to section 66D agreements made with water undertakers whose areas are partly in England and partly in Wales.

(12) This section is subject to section 66DC.

#### **66DC Codes under section 66DA: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue a revised code and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
  - (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 66DB does not apply to the proposed revised code.
- (3) Once the Authority has issued the revised code, it must give notice as soon as reasonably practicable of—
  - (a) the issuing of the revised code, and
  - (b) as regards each revision contained in it, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (4) Notice under subsection (3) is to be given to such persons as the Authority considers appropriate.
- (5) Unless the Authority gives notice that a revision in a revised code is in the view of the Authority a revision falling within subsection (1)(a), the revision ceases to have effect at the end of the period of six months beginning with the day after that on which the revised code is issued.”

#### **Commencement Information**

- I1** Sch. 2 para. 4 in force at 1.9.2015 for specified purposes by S.I. 2015/773, art. 3(c) (with art. 5)
- I2** Sch. 2 para. 4 in force at 1.9.2015 for specified purposes by S.I. 2015/1469, art. 3(d)(i) (with art. 5(1)(3)(5))
- I3** Sch. 2 para. 4 in force at 1.4.2016 for specified purposes by S.I. 2016/465, art. 2(j)(i) (with Sch. 2)
- I4** Sch. 2 para. 4 in force at 30.3.2017 in so far as not already in force by S.I. 2017/462, art. 2(c) (with art. 10)

5 For section 66E of that Act there is substituted—

#### **“66E Rules about charges**

- (1) The Authority must issue rules about charges that may be imposed by a water undertaker under a section 66D agreement.
- (2) The rules may in particular make provision about—
  - (a) the types of charges that may be imposed;
  - (b) the amount or the maximum amount, or methods for determining the amount or maximum amount, of any type of charge;

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- (c) principles for determining what types of charges may or may not be imposed;
  - (d) principles for determining the amount of any charge that may be imposed;
  - (e) publication of the charges that may be imposed.
- (3) The rules must include provision for and in connection with requiring a water undertaker to impose on a water supply licensee only such charges as would enable the licensee, where the services it provides to a person under its retail authorisation or restricted retail authorisation are services to which a section 142(2)(b) agreement would apply if the undertaker had continued to provide the services, to charge for those services at the same rate or rates as would have applied if the section 142(2)(b) agreement had applied.
- (4) In subsection (3) “section 142(2)(b) agreement” means an agreement to which section 142(2)(b) applies.
- (5) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may—
- (a) give the undertaker a direction to do, or not to do, a thing specified in the direction, or
  - (b) in a case where a section 66D agreement to which the undertaker is party requires modification in order to conform to the rules, give a direction to the undertaker and the water supply licensee in question to modify the agreement.
- (6) It is the duty of a water undertaker or a water supply licensee to comply with a direction under subsection (5), and this duty is enforceable by the Authority under section 18.
- (7) The rules may—
- (a) make different provision for different persons or descriptions of person;
  - (b) make different provision for different purposes;
  - (c) make provision subject to exceptions.
- (8) The Authority may from time to time revise rules issued under this section and issue revised rules.
- (9) The Authority must issue revised rules if—
- (a) guidance is issued under section 66ED, and
  - (b) the Authority, having regard to that guidance, considers that it is appropriate to revise the rules.
- (10) Revised rules may include provision for applying any of their revisions to section 66D agreements made before the revised rules come into effect.

#### **66EA Rules about charges: provision about the reduction of charges**

- (1) Rules under section 66E may make provision about the reduction of charges payable under a section 66D agreement where—
- (a) a water supply licensee that has a retail authorisation or a restricted retail authorisation is party to the section 66D agreement, and

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- (b) other conditions specified by the rules are satisfied.
- (2) Rules made by virtue of subsection (1) may in particular—
  - (a) specify conditions relating to any party to the section 66D agreement;
  - (b) specify conditions about persons taking steps for the purpose of reducing or managing water consumption;
  - (c) specify conditions about the premises by reference to which such steps are to be taken;
  - (d) specify conditions about reducing charges payable by a person who—
    - (i) is not party to the section 66D agreement, and
    - (ii) takes or proposes to take such steps as satisfy or would satisfy a condition specified under paragraph (b).
- (3) The rules may provide that, where a charge falls to be reduced in accordance with rules made by virtue of subsection (1), the water undertaker to which the charges are payable must give notice of that reduction to the Authority.
- (4) Rules made by virtue of subsection (3) may—
  - (a) make provision as to the content of the notice;
  - (b) specify the period within which an undertaker is to give notice to the Authority.
- (5) Provision under subsection (4)(a) may in particular require the notice to specify—
  - (a) the amount of the charge, with and without the reduction;
  - (b) the period for which the reduction has effect.

#### **66EB Rules under section 66E: procedure**

- (1) Before issuing rules under section 66E, the Authority must—
  - (a) prepare a draft of the proposed rules, and
  - (b) consult the relevant persons about the draft.
- (2) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Council;
  - (d) any water undertakers likely to be affected by the rules;
  - (e) any water supply licensees likely to be affected by the rules;
  - (f) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which persons may make representations about the proposed rules.
- (4) The Authority must have regard to guidance issued under section 66ED in preparing rules under section 66E.
- (5) Before rules under section 66E prepared by the Authority are issued, the Minister may direct the Authority not to issue the rules.
- (6) In subsection (5) “the Minister” means—

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- (a) the Secretary of State, so far as rules prepared by the Authority relate to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, so far as rules prepared by the Authority relate to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, so far as rules prepared by the Authority relate to section 66D agreements not falling within paragraph (a) or (b).
- (7) A direction under subsection (5) must be given within the period of 28 days beginning with the day after the end of the consultation period, and rules may not be issued before that period of 28 days has expired.
- (8) This section is subject to section 66EC.

#### **66EC Rules under section 66E: minor or urgent revisions**

- (1) This section applies if the Authority proposes to issue revised rules under section 66E and, in the view of the Authority, the revision or each of the revisions proposed to be made is—
- (a) a revision for which consultation is unnecessary, or
  - (b) a revision that it is necessary or desirable to make without delay.
- (2) Section 66EB does not apply to the proposed revised rules.
- (3) Before issuing the revised rules, the Authority must give notice to the Minister of its intention to issue revised rules.
- (4) Before the revised rules are issued, the Minister may direct the Authority not to issue the revised rules.
- (5) A direction under subsection (4) must be given within the period of 14 days beginning with the day after the day on which notice is given under subsection (3), and the Authority may not issue the revised rules in question before—
- (a) that period of 14 days expires, or
  - (b) the Minister notifies the Authority that no direction under subsection (4) will be given in relation to the revised rules,
- whichever is the sooner.
- (6) Once the Authority has issued the revised rules, it must give notice as soon as reasonably practicable of—
- (a) the issuing of the revised rules, and
  - (b) as regards each revision contained in them, whether in the view of the Authority the revision falls within paragraph (a) or (b) of subsection (1).
- (7) Notice under subsection (6) is to be given to such persons as the Authority considers appropriate.
- (8) Unless the Authority gives notice that a revision in revised rules is in the view of the Authority a revision falling within subsection (1)(a), the revision



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ceases to have effect at the end of the period of six months beginning with the day after that on which the revised rules are issued.

(9) In this section “the Minister” has the meaning given by section 66EB.

#### **66ED Rules under section 66E: guidance**

- (1) The Minister may issue guidance as to the content of rules under section 66E.
- (2) Before issuing the guidance, the Minister must—
  - (a) prepare a draft of any proposed guidance;
  - (b) consult the relevant persons about the draft.
- (3) The relevant persons are—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) such other persons as the Minister thinks appropriate.
- (4) The Minister may from time to time revise guidance issued under this section and issue revised guidance.
- (5) Subsections (2) and (3) apply to revised guidance as they apply to the original guidance.
- (6) The Minister must arrange for the publication of guidance issued under this section.
- (7) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in England;
  - (b) the Welsh Ministers, in relation to section 66D agreements affecting only the supply systems of water undertakers whose areas are wholly or mainly in Wales;
  - (c) the Secretary of State and the Welsh Ministers acting jointly, in relation to section 66D agreements not falling within paragraph (a) or (b).”

#### **Commencement Information**

- I5** Sch. 2 para. 5 in force at 1.9.2015 for specified purposes by S.I. 2015/1469, art. 3(d)(ii) (with art. 5(1)(3)(5))
- I6** Sch. 2 para. 5 in force at 1.9.2016 for specified purposes by S.I. 2016/465, art. 3(e) (with Sch. 2)

VALID FROM 01/04/2017

6 Section 66F (section 66D: supplementary) is repealed.

VALID FROM 01/04/2017

7 (1) Section 66G (designation of strategic supply) is amended as follows.

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- (2) In subsection (1), for “an agreement under section 66D above” there is substituted “ a section 66D agreement ”.
- (3) In subsection (4)(d), for “the agreement under section 66D above” there is substituted “ the section 66D agreement ”.
- (4) In subsection (10)—
  - (a) for “section 66A” there is substituted “ section 66AA ”;
  - (b) for “customers of the licensed water supplier in question” there is substituted “ relevant customers of a water supply licensee ”.
- (5) After subsection (10) there is inserted—
  - “(11) A person is a relevant customer of a water supply licensee if the introduction of water in question is made by reference to the supply of water to that person's premises in accordance with—
    - (a) a retail authorisation (whether that retail authorisation is an authorisation of the licensee requesting the introduction of water or another water supply licensee's authorisation), or
    - (b) a restricted retail authorisation of the licensee requesting the introduction of water.”

VALID FROM 01/04/2017

- 8 (1) Section 66H (designation of collective strategic supply) is amended as follows.
  - (2) In subsection (1)(b), for “agreements under section 66D above” there is substituted “ section 66D agreements ”.
  - (3) In subsection (4)(d), for “the agreements under section 66D above” there is substituted “ the section 66D agreements ”.
  - (4) In subsection (10)—
    - (a) for “section 66A” there is substituted “ section 66AA ”;
    - (b) for “customers of the licensed water supplier in question” there is substituted “ relevant customers of a water supply licensee ”.
  - (5) After subsection (10) there is inserted—
    - “(11) A person is a relevant customer of a water supply licensee if an introduction of water is made by reference to the supply of water to that person's premises in accordance with—
      - (a) a retail authorisation (whether that retail authorisation is an authorisation of the licensee requesting the introduction of water or another water supply licensee's authorisation), or
      - (b) a restricted retail authorisation of the licensee requesting the introduction of water.”
- 9 (1) Section 66I (prohibition on unauthorised use of supply system) is amended as follows.
  - (2) In subsection (1), for “of a customer” there is substituted “of—
    - (a) a customer,

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- (b) the person so using that system, or
- (c) a person associated with that person”.

(3) In subsection (2)(b)—

- (a) for “licensed water supplier” there is substituted “ water supply licensee ”;
- (b) for “its licence” there is substituted “ the licensee's licence ”.

(4) After subsection (8), there is inserted—

“(8A) For the purposes of this section, a person (A) is associated with another person (B) if they would be associated with each other for the purposes of Schedule 2A if A were a water supply licensee.”

(5) In subsection (9), for “section 17B(5) above” there is substituted “ section 17B ”.

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**Commencement Information**

- I7** Sch. 2 para. 9(1) in force at 1.4.2016 for specified purposes by S.I. 2016/465, art. 2(j)(iii) (with Sch. 2)
- I8** Sch. 2 para. 9(2)(3) in force at 1.4.2016 by S.I. 2016/465, art. 2(j)(ii) (with Sch. 2)

**Status:**

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**Changes to legislation:**

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