



Water Act 1989

1989 CHAPTER 15

PART II

WATER SUPPLY AND SEWERAGE SERVICES

CHAPTER I

APPOINTMENT AND REGULATION OF WATER AND SEWERAGE UNDERTAKERS

Making and conditions of appointments

11 Appointment of undertakers

- (1) Subject to the following provisions of this Chapter, a company may be appointed—
- (a) by the Secretary of State; or
 - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director,
- to be the water undertaker or sewerage undertaker for any area of England and Wales.
- (2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect while the appointment remains in force—
- (a) of requiring the company to perform any duty imposed by or under any enactment on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);
 - (b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any enactment on an undertaker of that description;
 - (c) of requiring enactments and subordinate legislation authorising or requiring anything to be done in relation to an undertaker of the relevant description to

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- be construed as authorising or requiring that thing to be done in relation to that company; and
- (d) of requiring other references in any enactment or subordinate legislation to an undertaker of the relevant description or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.
- (3) The appointment of a company to be a water undertaker or sewerage undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made; and a single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.
- (4) It shall be the duty of the Secretary of State to make such appointments under this Chapter as will secure—
- (a) that on the transfer date a statutory water company becomes the water undertaker for the area appointment for which will, in the opinion of the Secretary of State, ensure that the company continues to supply water for the same area on and after that date as immediately before; and
- (b) that on the transfer date the successor companies become water undertakers for areas comprising so much of England and Wales as is not the subject of appointments by virtue of paragraph (a) above and sewerage undertakers for the areas which immediately before that date are the water authorities' areas for the purposes of section 14 of the 1973 Act (sewerage and sewage disposal);
- and to secure that such appointments are made under this Chapter as will ensure that for every area of England and Wales there is at all times on and after the transfer date both a company holding an appointment under this Chapter as water undertaker and (whether or not the same company in relation to the whole or any part of that area) a company holding an appointment as sewerage undertaker.
- (5) A company shall not be appointed to be a water undertaker unless it is a limited company or a statutory water company and shall not be appointed to be a sewerage undertaker unless it is a limited company.
- (6) Subject to subsection (7) and section 12 below—
- (a) the Secretary of State; and
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, the Director,
- shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.
- (7) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations to which section 12 below applies as secure either—
- (a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or
- (b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.

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- (8) As soon as practicable after making an appointment under this Chapter or exercising any power to vary the area to which such an appointment relates, the Secretary of State shall send a copy of the appointment or variation to the Director.
- (9) In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—
- “Director of a company for the time being holding an appointment under Chapter I of Part II of the Water Act 1989 or of such a company’s holding company, being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown.”;

and the like insertion shall be made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

12 Restrictions on making replacement appointments

- (1) This section applies—
- (a) to any appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any one or more existing areas; and
 - (b) to any variation by virtue of which the area for which a company holds an appointment under this Chapter is modified so as to include the whole or any part of one or more existing areas.
- (2) An appointment or variation to which this section applies shall not be made in relation to the whole or any part of an existing area except where—
- (a) the existing appointee consents to the appointment or variation;
 - (b) the appointment or variation relates only to parts of that area none of the premises in which is served by the existing appointee; or
 - (c) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of appointment of the existing appointee.
- (3) In determining whether to make an appointment or variation by virtue of subsection (2) (b) above in relation to any part of an existing area, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by the existing appointee.
- (4) It shall be the duty of the Secretary of State or, as the case may be, of the Director, in making an appointment or variation to which this section applies and, where he makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of—
- (a) charges in respect of services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; and
 - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay,
- to ensure, so far as may be consistent with his duties under Part I of this Act, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

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- (5) For the purposes of this section premises in a part of an existing area are served by the existing appointee—
- (a) in relation to an appointment or variation by virtue of which that appointee would be replaced as the water undertaker for that part of that area, if those premises—
 - (i) are supplied with water by means of a connection with a distribution main of the existing appointee; or
 - (ii) consist in a building or part of a building which is situated within thirty metres of such a main;
 - and
 - (b) in relation to an appointment or variation by virtue of which that appointee would be replaced as the sewerage undertaker for that part of that area, if those premises—
 - (i) are drained by means of a relevant sewer; or
 - (ii) consist in a building or part of a building which is situated within thirty metres of such a sewer, not being a storm-water overflow sewer.
- (6) In this section—
- “distribution main” means a water main that is not a trunk main;
 - “existing area”, in relation to the appointment of any company to be the water undertaker or sewerage undertaker for any area or the variation of any company’s appointment as a water undertaker or sewerage undertaker, means an area for which, until the appointment or variation comes into force, another company (“the existing appointee”) holds the appointment as water undertaker or, as the case may be, sewerage undertaker;
 - “new appointee”, in relation to an appointment or variation to which this section applies, means the company which by virtue of the appointment or variation becomes the water undertaker or sewerage undertaker for the whole or any part of an existing area;
 - “relevant sewer”, in relation to an appointment or variation to which this section applies, means any of the following, that is to say—
 - (a) a public sewer vested in the existing appointee;
 - (b) a sewer in relation to which the existing appointee has made, or is treated as having made, a declaration of vesting under section 17 of the Public Health Act 1936 (vesting declarations) which has not yet taken effect;
 - (c) a drain or sewer in relation to which the existing appointee has, or is treated as having, entered into an agreement under section 18 of that Act.

13 Procedure for replacement appointments

- (1) An application for an appointment or variation to which section 12 above applies shall be made in such manner as may be prescribed; and, within fourteen days after making any such application, the applicant shall—
- (a) serve notice of the application on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the application relates; and
 - (b) publish a copy of the notice in such manner as may be prescribed.
- (2) Before making an appointment or variation to which section 12 above applies, the Secretary of State or the Director shall give notice—

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- (a) stating that he proposes to make the appointment or variation;
 - (b) stating the reasons why he proposes to make the appointment or variation; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed appointment or variation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
 - (b) by serving a copy of the notice on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.
 - (4) Before making an appointment or variation to which section 12 above applies, the Secretary of State shall consult the Director.
 - (5) As soon as practicable after making an appointment or variation to which section 12 above applies, the Secretary of State or the Director shall—
 - (a) serve a copy of the appointment or variation on the existing appointee; and
 - (b) serve notice of the making of the appointment or variation on every local authority whose area includes the whole or any part of the area to which the appointment or variation relates.
 - (6) Schedule 5 to this Act shall have effect with respect to the making of transitional provision for the purposes of, or in connection with, the making of an appointment or variation to which section 12 above applies.
 - (7) In this section “the existing appointee”, in relation to an appointment or variation to which section 12 above applies, means the company which is the existing appointee for the purposes of that section in relation to any area to the whole or any part of which the appointment or variation relates or, where there is more than one such company, each of them.

14 Conditions of appointment

- (1) An appointment under this Chapter may include—
 - (a) such conditions (whether or not connected with the supply of water, the provision of sewerage services or the exercise or performance of any power or duty conferred or imposed by or under any enactment on water undertakers or sewerage undertakers) as appear to the Secretary of State or, as the case may be, the Director to be requisite or expedient having regard to the duties imposed on him by Part I of this Act;
 - (b) conditions for the purposes of section 12(2)(c) above; and
 - (c) conditions requiring the rendering to the Secretary of State of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.

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- (2) Without prejudice to the generality of paragraph (a) of subsection (1) above, conditions included in an appointment by virtue of that paragraph may—
- (a) require the appointed company to comply with any direction given by the Director as to such matters as are specified in the appointment or are of a description so specified;
 - (b) require the appointed company, except in so far as the Director consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment, or are of a description so specified; and
 - (c) provide for the reference to and determination by—
 - (i) the Secretary of State or the Director; or
 - (ii) on a reference by the Director, the Monopolies and Mergers Commission (in this Act referred to as “the Monopolies Commission”),
 of such questions arising under the appointment and of such other matters, including (in the case of references to the Commission) disputes as to determinations by the Director, as are specified in the appointment or are of a description so specified.
- (3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions; and any provision included by virtue of this subsection in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.
- (4) Subsection (5) below applies in relation to the appointment of any company under this Chapter in pursuance of section 11(4)(a) above where provision is contained in that appointment by virtue of subsection (2) or (3) above for postponing the determination of, or of any of the terms of, the conditions of the appointment with respect to the fixing by the company of—
- (a) charges in respect of any services provided by that company in the course of the carrying out of the functions of a water undertaker; or
 - (b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay,
- until a time after the transfer date and before the end of the financial year current on that date.
- (5) Where this subsection applies in relation to a company's appointment, the conditions or terms mentioned in subsection (4) above shall not be determined in accordance with the provision so mentioned unless—
- (a) notice of the proposed determination has been served on the company;
 - (b) the company has been allowed a period of at least twenty-eight days from the date of service of the notice for making representations or objections with respect to the proposed determination; and
 - (c) the Secretary of State has considered any such representations or objections which have been duly made and are not withdrawn.
- (6) Where any question or other matter falls to be determined by the Monopolies Commission in pursuance of a provision contained in an appointment under this Chapter—

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- (a) it shall be the duty of the Director, on being required to do so by the company holding that appointment, to refer that question or matter to that Commission; and
 - (b) it shall be the duty of that Commission to determine any question or other matter referred by virtue of paragraph (a) above in accordance with any regulations under subsection (7) below and with the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.
- (7) The Secretary of State may by regulations make such provision as he considers appropriate for regulating the procedure to be followed with respect to the reference of any question or other matter to the Monopolies Commission in pursuance of provision contained in an appointment under this Chapter; and, without prejudice to the generality of that power, any such regulations may, in relation to any such reference, apply (with or without modifications) the provisions of any enactment relating to references to that Commission under the following provisions of this Act, the Fair Trading Act 1973 or the Competition Act 1980.
- (8) For the purposes of this Act where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this section shall have effect, irrespective of their subject-matter, as conditions of both appointments.
- (9) Where an instrument of appointment has been served under subsection (3) of section 11 above on any company, the coming into force of the appointment for the purposes specified in subsection (2) of that section shall not be affected by any contravention of the requirements of this Act with respect to the provision contained by way of conditions of appointment in that instrument; and if the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision, he may by order made by statutory instrument direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.
- (10) Any sums received by the Secretary of State in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

Modification of appointment conditions

15 Modification by agreement

- (1) Subject to the following provisions of this section, the Director may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.
- (2) Before making modifications under this section, the Director shall give notice—
 - (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; and

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- (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (3) A notice under subsection (2) above shall be given—
 - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the company and on the Secretary of State.
- (4) The Director shall not under this section make any modifications which the Secretary of State has, within the time specified in the notice under subsection (2) above, directed the Director not to make.
- (5) The Secretary of State shall not give a direction under subsection (4) above in relation to any modification unless—
 - (a) the modification is a modification of provision contained in the appointment for the purposes of section 12(2)(c) above;
 - (b) the modification is a modification of a provision of the appointment which relates to the disposal of, or of interests or rights in or over, a company's protected land and is stated in the appointment to be a provision which cannot be modified; or
 - (c) it appears to the Secretary of State that the modification should be made, if at all, under section 18 below.

16 Modification references to Monopolies Commission

- (1) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
 - (a) whether any matters which—
 - (i) relate to the carrying out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; and
 - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the company's appointment.
- (2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.
- (3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—
 - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and

- (b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in his opinion, those effects could be remedied or prevented.
- (4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director shall—
- (a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and
 - (b) publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.
- (5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, to give to the Commission—
- (a) any information in his possession which relates to matters falling within the scope of the investigation, and which is either—
 - (i) requested by the Commission for that purpose; or
 - (ii) information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request;
 and
 - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;
- and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.
- (6) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by Part I of this Act.
- (7) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the Competition Act 1980 (modifications of provisions about performance of such functions) shall apply in relation to references under this section as if—
- (a) the functions of the Commission in relation to those references were functions under the said Act of 1973;
 - (b) the expression “merger reference” included a reference under this section;
 - (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
 - (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the said Act of 1973 were a reference to subsection (2) above; and
 - (e) paragraph 16(2) of that Schedule were omitted.
- (8) For the purposes of references under this section the Secretary of State shall appoint not less than eight additional members of the Monopolies Commission; and, if any functions of that Commission in relation to any such reference are performed through a group—
- (a) the chairman of that Commission shall select one or more of those additional members to be members of the group; and

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- (b) the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the Fair Trading Act 1973 shall be reduced by the number of additional members selected.

17 Reports on modification references

- (1) In making a report on a reference under section 16 above, the Monopolies Commission—
 - (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating a proper understanding of those questions and of their conclusions;
 - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
 - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) Where, on a reference under section 16 above, the Monopolies Commission conclude that a company holding an appointment under this Chapter is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.
- (3) Section 82 of the Fair Trading Act 1973 (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 16 above as it applies to reports of the Commission under that Act.
- (4) A report of the Monopolies Commission on a reference under section 16 above shall be made to the Director.
- (5) Subject to subsection (6) below, the Director—
 - (a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter the report relates and to the Secretary of State; and
 - (b) shall, not less than fourteen days after that copy is received by the Secretary of State, publish another copy of that report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of fourteen days mentioned in paragraph (b) of subsection (5) above, direct the Director to exclude that matter from every copy of the report to be published by virtue of that paragraph; and the Director shall comply with any such direction.

18 Modification following report

- (1) Where a report of the Monopolies Commission on a reference under section 16 above—
 - (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter; and
 - (d) specifies modifications by which those effects could be remedied or prevented,the Director shall, subject to the following provisions of this section, make such modifications of the conditions of that appointment as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
 - (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
 - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the company whose appointment it is proposed to modify.
- (5) The Director shall not under this section make any modification of any provisions of a company's appointment under this Chapter which—
 - (a) are contained in that appointment for the purposes of section 12(2)(c) above; or
 - (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

19 Modification by order under other enactments

- (1) Subject to subsection (3) below, where in the circumstances mentioned in subsection (2) below the Secretary of State by order exercises any of the powers specified in Parts I and II of Schedule 8 to the Fair Trading Act 1973 or section 10(2) (a) of the Competition Act 1980, the order may also provide for the modification of the conditions of a company's appointment under this Chapter to such extent as may

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appear to him to be requisite or expedient for the purpose of giving effect to or taking account of any provision made by the order.

- (2) Subsection (1) above shall have effect where—
- (a) the circumstances are as mentioned in section 56(1) of the said Act of 1973 (order on report on monopoly reference) and the monopoly situation exists in relation to the carrying out of any of the functions of a water undertaker or sewerage undertaker;
 - (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were both engaged in carrying out functions of a water undertaker or sewerage undertaker; or
 - (c) the circumstances are as mentioned in section 10(1) of the said Act of 1980 (order on report on competition reference) and the anti-competitive practice relates to the carrying out of any of the functions of a water undertaker or sewerage undertaker.
- (3) No modification shall be made by virtue of this section of any provisions of a company's appointment under this Chapter which—
- (a) are contained in that appointment for the purposes of section 12(2)(c) above; or
 - (b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.
- (4) In this section expressions which are also used in the said Act of 1973 or the said Act of 1980 have the same meanings as in that Act.

Enforcement orders

20 Orders for securing compliance with certain provisions

- (1) Subject to subsections (2) and (5) and section 21 below, where in the case of any company holding an appointment under this Chapter the Secretary of State or the Director is satisfied—
- (a) that that company is contravening—
 - (i) any condition of the company's appointment in relation to which he is the enforcement authority; or
 - (ii) any statutory requirement which is enforceable under this section and in relation to which he is the enforcement authority;
 - or
 - (b) that that company has contravened any such condition or requirement and is likely to do so again,
- he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
- (2) Subject to subsection (5) below, where in the case of any company holding an appointment under this Chapter—
- (a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) above; and
 - (b) it appears to him that it is requisite that a provisional order be made,

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he may (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with the condition or requirement in question.

- (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory requirement enforceable under this section, is likely to be done, or omitted to be done, before a final order may be made.
- (4) Subject to subsection (5) and section 21 below, where the Secretary of State or the Director has made a provisional order, he shall confirm it, with or without modifications, if—
- (a) he is satisfied that the company to which the order relates—
 - (i) is contravening any condition or statutory requirement in relation to which he is the enforcement authority; or
 - (ii) has contravened any such condition or requirement and is likely to do so again;
 - and
 - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) Neither the Secretary of State nor the Director shall be required to make a final order or provisional order in relation to any company or to confirm a provisional order so made if he is satisfied—
- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
 - (b) that the company has given, and is complying with, an undertaking to take all such steps as it appears to him for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
 - (c) that the duties imposed on him by Part I of this Act preclude the making or, as the case may be, the confirmation of the order.
- (6) Where the Secretary of State or the Director, having notified a company that he is considering the making in relation to the company of a final order or provisional order or the confirmation of a provisional order so made, is satisfied as mentioned in paragraph (a), (b) or (c) of subsection (5) above, he shall—
- (a) serve notice that he is so satisfied on the company;
 - (b) publish a copy of the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (c) in a case where the Secretary of State is satisfied as mentioned in the said paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that paragraph on the Director;

but the requirements of the preceding provisions of this subsection shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 170 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

- (7) A final or provisional order—

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- (a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the enforcement authority who made it.
- (8) For the purposes of this section and the following provisions of this Act—
- (a) the statutory requirements which shall be enforceable under this section in relation to a company holding an appointment under this Chapter shall be—
 - (i) such of the requirements of section 8 or 9 above as are imposed on that company in consequence of that appointment; and
 - (ii) such of the requirements of any other enactment or of any subordinate legislation as are so imposed and are made so enforceable by that enactment or subordinate legislation;
 - (b) the Director shall be the enforcement authority in relation to the conditions of an appointment under this Chapter;
 - (c) the Secretary of State shall be the enforcement authority in relation to the requirements imposed by sections 8 and 9 above; and
 - (d) the enforcement authority in relation to each of the other statutory requirements enforceable under this section shall be the Secretary of State, the Director or either of them, according to whatever provision is made by the enactment or subordinate legislation by which the requirement is made so enforceable;

and the requirement to comply with an undertaking given for the purposes of subsection (5)(b) above shall be treated as a statutory requirement enforceable under this section by the Secretary of State or, with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.

- (9) In this section and sections 21 and 22 below—
- “final order” means an order under this section other than a provisional order;
 - “provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

- (10) Where any act or omission constitutes a contravention of a condition of an appointment under this Chapter or of a statutory requirement enforceable under this section, the only remedies for that contravention, apart from those available by virtue of this section, shall be those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting such a contravention.

21 Procedural requirements

- (1) Before making a final order or confirming a provisional order, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out the effect of the order;
 - (b) setting out—

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- (i) the condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
 - (iii) the other facts which, in his opinion, justify the making or confirmation of the order;
 - and
 - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
- (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.
- (3) Neither the Secretary of State nor the Director shall make a final order with modifications, or confirm a provisional order with modifications, except—
- (a) with the consent to the modifications of the company to which the order relates; or
 - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Secretary of State or, as the case may be, the Director shall—
- (a) serve on the company to which the order relates such notice as appears to him to be requisite of his proposal to make or confirm the order with modifications;
 - (b) in that notice specify the period (not being less than twenty-eight days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the Secretary of State or, as the case may be, the Director shall—
- (a) serve a copy of the order on the company to which the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on the Director; and
 - (b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Secretary of State or the Director shall give notice—
- (a) stating that he proposes to revoke the order and setting out its effect; and

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- (b) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Secretary of State or the Director decides not to revoke the order to which the notice relates, he shall give notice of that decision.
- (8) A notice under subsection (6) or (7) above shall be given—
 - (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.
- (9) The requirements of the preceding provisions of this section shall not apply, in the case of any order in respect of a contravention of a direction under section 170 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

22 Validity and effect of orders

- (1) If the company to which a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—
 - (a) that its making or confirmation was not within the powers of section 20 above;
or
 - (b) that any of the requirements of section 21 above have not been complied with in relation to it,
 the company may, within forty-two days from the date of service on it of a copy of the order, make an application to the High Court under this section.
- (2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned in any legal proceedings whatsoever.
- (4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.
- (5) Where a duty is owed by virtue of subsection (4) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.
- (6) In any proceedings brought against any company in pursuance of subsection (5) above, other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of section 52(1)(a) below, it shall be a defence for the company to show that it took all reasonable steps and exercised all due diligence to avoid contravening the order.

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- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the relevant enforcement authority for an injunction or for any other appropriate relief.
- (8) In subsection (7) above “the relevant enforcement authority”, in relation to any final or provisional order, means the Secretary of State or the Director or either of them according to who is the enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

Special administration orders

23 Special administration orders in relation to water or sewerage undertakers

- (1) If, on an application made to the High Court by petition presented—
- (a) by the Secretary of State; or
 - (b) with the consent of the Secretary of State, by the Director,
- that Court is satisfied in relation to any company which holds an appointment under this Chapter that any one or more of the grounds specified in subsection (4) below is satisfied in relation to that company, that Court may make an order under this section.
- (2) An order under this section is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court, for the achievement of the purposes of the order and in a manner which protects the respective interests of the members and creditors of the company.
- (3) The purposes of an order made under this section in relation to a company holding an appointment under this Chapter shall be—
- (a) the transfer to another company, or (as respects different parts of the company’s area or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company’s undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and
 - (b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation to which section 12 above applies).
- (4) The grounds mentioned in subsection (1) above are, in relation to any company—
- (a) that there has been, is or is likely to be such a contravention by the company of a requirement imposed on the company by section 37 or 67 below, not being a contravention in respect of which a notice has been served under subsection (6) of section 20 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment;
 - (b) that there has been, is or is likely to be such a contravention by the company of the provisions of any final order or provisional order under section 20 above, being an order which—

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- (i) is not for the time being the subject-matter of proceedings brought by virtue of section 22(1) above; and
 - (ii) if it is a provisional order, has been confirmed,
- as is serious enough to make it inappropriate for the company to continue to hold its appointment;
- (c) that the company is or is likely to be unable to pay its debts;
 - (d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 24 below, for him to petition for the winding up of the company under section 440 of the Companies Act 1985 (petition by the Secretary of State following inspectors' report etc.), it would be just and equitable, as mentioned in that section, for the company to be wound up if it did not hold an appointment under this Chapter; or
 - (e) that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or the Director to be necessary by reason of, or in connection with, a proposal for the making by virtue of subsection (2)(c) of section 12 above of any appointment or variation to which that section applies.
- (5) Notice of the petition for an order under this section shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the Insolvency Act 1986; and no such petition shall be withdrawn except with the leave of the High Court.
- (6) Subsections (4) and (5) of section 9 of the said Act of 1986 (powers on application for administration order) shall apply on the hearing of the petition for an order under this section in relation to any company as they apply on the hearing of a petition for an administration order.
- (7) Subsections (1), (2) and (4) of section 10 of the said Act of 1986 (effect of petition) shall apply in the case of a petition for an order under this section in relation to any company as if—
- (a) the reference in subsection (1) to an administration order were a reference to an order under this section;
 - (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and
 - (c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 20 above.
- (8) Schedule 6 to this Act shall have effect with respect to orders under this section and Schedule 5 to this Act shall have effect with respect to the making of transitional provision for the purposes of an order under this section.
- (9) In this section and section 24 below—
- “business” and “property” have the same meanings as in the Insolvency Act 1986;
 - “security” has the same meaning as in Parts I to VII of that Act;
- and for the purposes of this section a company is unable to pay its debts if it is a limited company which is deemed to be so unable under section 123 of the Insolvency Act 1986 (definition of inability to pay debts) or if it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).

24 Restriction on winding-up etc. of water or sewerage undertaker

- (1) Where a company holds an appointment under this Chapter—
 - (a) the company shall not be wound up voluntarily;
 - (b) no administration order shall be made in relation to the company under Part II of the Insolvency Act 1986; and
 - (c) no step shall be taken by any person to enforce any security over the company's property except where that person has served fourteen days' notice of his intention to take that step on the Secretary of State and on the Director.
- (2) On an application made to any court for the winding up of a company which holds an appointment under this Chapter—
 - (a) the court shall not make a winding-up order in relation to the company; but
 - (b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment, it shall, instead, make an order under section 23 above in relation to the company.

25 Government financial assistance where special administration orders made

- (1) Where a special administration order is for the time being in force in relation to a company, the Secretary of State, may, with the consent of the Treasury—
 - (a) make to the company grants or loans of such sums as appear to him to be appropriate for the purpose of facilitating the achievement of the purposes of the order;
 - (b) agree to indemnify the person appointed to achieve the purposes of the order in respect of liabilities incurred and loss or damage sustained by that person in connection with the carrying out of his functions under the order.
- (2) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which is borrowed from any person by a company in relation to which a special administration order is in force at the time when the guarantee is given.
- (3) Without prejudice to any provision applied in relation to the company by Schedule 6 to this Act—
 - (a) the terms and conditions on which a grant is made to any company under this section may require the whole or part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms and conditions on which the grant is made; and
 - (b) any loans which the Secretary of State makes to a company under this section shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the consent of the Treasury, from time to time direct.
- (4) Any grant or loan made under this section and any sums required to be paid by the Secretary of State in respect of an indemnity given under this section shall be paid out of money provided by Parliament.
- (5) Any sums received under subsection (3) above by the Secretary of State shall be paid into the Consolidated Fund.

- (6) In this section “special administration order” means an order under section 23 above (whether made by virtue of that section or section 24 above).

Review of certain matters and investigation of complaints

26 Director’s duty to keep matters under review and to consider certain matters

- (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so, to keep under review the carrying on both in England and Wales and elsewhere of activities connected with the matters in relation to which water undertakers or sewerage undertakers carry out functions.
- (2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time to do so, to collect information with respect to—
- (a) the carrying out by companies appointed under this Chapter of the functions of water undertakers or sewerage undertakers; or
 - (b) any such company,
- with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on him by or under any enactment.
- (3) The Secretary of State may give general directions indicating—
- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1) or (2) above; and
 - (b) considerations to which, in cases where it appears to the Director that any of his powers under this Part are exercisable, he should have particular regard in determining whether to exercise those powers;
- and it shall be the duty of the Director to comply with any such directions.
- (4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or the Director General of Fair Trading to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter relating to the functions of water undertakers or sewerage undertakers or the carrying out of any such functions by a company holding an appointment under this Chapter.

27 Protection of customer interests

- (1) It shall be the duty of a customer service committee—
- (a) to keep under review all matters appearing to the committee to affect the interests of the persons who are customers or potential customers of the companies allocated to the committee, to consult each company so allocated about such of those matters as appear to affect the interests of the customers or potential customers of that company and to make to a company so allocated all such representations about any such matter as the committee considers appropriate;
 - (b) subject to paragraph (c) below, to investigate any complaint which—
 - (i) is made to the committee by any person who is a customer or potential customer of a company so allocated or is referred to the committee by the Director under subsection (2) below;

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- (ii) does not appear to the committee to be vexatious or frivolous; and
 - (iii) relates to the carrying out by that company of any of the functions of a water undertaker or sewerage undertaker;
 - (c) to refer to the Director every complaint which is made to the committee by any person in relation to a company allocated to the committee and consists in or amounts to a complaint which the Director would be required to investigate under section 162 below or an assertion that the company is contravening or has contravened—
 - (i) any condition of the company’s appointment under this Chapter; or
 - (ii) any statutory or other requirement enforceable under section 20 above;
 - (d) where the committee considers it appropriate to do so in connection with any such complaint as is mentioned in paragraph (b) above, to make representations on behalf of the complainant to the company in question about any matter to which the complaint relates or which appears to the committee to be relevant to the subject-matter of the complaint; and
 - (e) to refer to the Director or, as the case may be, back to the Director any such complaint as is so mentioned which the committee is unable to resolve.
- (2) It shall be the duty of the Director—
 - (a) to consider whether any complaint which—
 - (i) is made to him by a customer or potential customer of a company allocated to a customer service committee; and
 - (ii) does not consist in or amount to a complaint which he is required to investigate under section 162 below or such an assertion as is mentioned in subsection (1)(c) above,
should be referred to that committee instead of being dealt with by him;
 - (b) to consider whether any complaint which does consist in or amount to such an assertion and is either made to him by such a customer or potential customer or is referred to him by such a committee should be referred by him to the Secretary of State;
 - (c) to consider any such complaint as is mentioned in paragraph (b) above which is not referred by him to the Secretary of State;
 - (d) to consider any complaint referred to him by virtue of subsection (1)(e) above;
 - (e) to consider any complaint made to him by a customer or potential customer of a company allocated to a customer service committee that the committee has failed to perform any duty imposed on it by subsection (1) above; and
 - (f) to take such steps in consequence of his consideration of any matter falling within any of paragraphs (a) to (e) above (including in a case falling within paragraph (d) or (e) above any step which could have been taken by the committee) as he considers appropriate.
- (3) The only remedy for a breach by a customer service committee of a duty imposed on it by subsection (1) above shall be the making of such a complaint to the Director as is mentioned in subsection (2)(e) above.
- (4) It shall be the duty of the Director to make such arrangements as he considers appropriate for facilitating the provision by one customer service committee to another of any such information as that other committee may require for any purpose relating to the carrying out of its functions.

Provisions with respect to competition

28 Functions of Director with respect to competition

- (1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the Fair Trading Act 1973 so far as relating to courses of conduct which are or may be detrimental to the interests of persons who are consumers in relation to the supply of water by water undertakers or the provision of sewerage services by sewerage undertakers, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.
- (2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—
 - (a) the functions of that Director under sections 44 and 45 of the Fair Trading Act 1973; and
 - (b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the supply of water or the provision of sewerage services; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.
- (3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 and 16 of the Competition Act 1980 so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the supply of water or securing a supply of water or with the provision or securing of sewerage services; and references in those sections and in section 19 of that Act to that Director shall be construed accordingly.
- (4) Before either Director first exercises in relation to any matter functions transferred by any of the following provisions, namely—
 - (a) paragraph (a) of subsection (2) above;
 - (b) paragraph (b) of that subsection; and
 - (c) subsection (3) above,
 he shall consult the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other Director.
- (5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) or (3) above, to give to the Commission—
 - (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
 - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;
 and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

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- (6) If any question arises as to whether subsection (2) or (3) above applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—
- (a) Part IV or section 86 or 88 of the Fair Trading Act 1973; or
 - (b) sections 2 to 10 of the Competition Act 1980,
- by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.
- (7) Expressions used in this section which are also used in the Fair Trading Act 1973 or the Competition Act 1980 have the same meaning as in that Act.

29 Mergers of water or sewerage undertakings

- (1) Subject to the following provisions of this section, it shall be the duty of the Secretary of State to make a merger reference to the Monopolies Commission if it appears to him that it is or may be the fact—
- (a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or
 - (b) that such a merger has taken place at any time on or after 11th January 1989 otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.
- (2) For the purposes of this section an enterprise shall be regarded as a water enterprise—
- (a) in relation to a merger on or after the transfer date, if it is carried on by a water undertaker or sewerage undertaker; and
 - (b) in relation to a merger on or after 11th January 1989 and before the transfer date, if it is or was carried on by a statutory water company within the meaning of the 1973 Act or by a water authority.
- (3) The Secretary of State shall not make a merger reference under this section in respect of any actual or prospective merger of two or more water enterprises if it appears to him—
- (a) that the take over from which the merger has resulted or, as the case may be, would result was initiated before 9 a.m. on 11th January 1989;
 - (b) that the value of the assets taken over does not exceed or, as the case may be, would not exceed the amount for the time being specified in section 64(1)(b) of the Fair Trading Act 1973 (condition of merger reference relating to amount of assets taken over); or
 - (c) that the only water enterprises already belonging to the person making the take over are enterprises each of which has assets the value of which does not exceed or, as the case may be, would not exceed that amount.
- (4) For the purposes of subsection (3) above a merger of two or more enterprises results from a take over initiated before 9 a.m. on 11th January 1989 if—
- (a) the Secretary of State or the Director General of Fair Trading was given notice before that time on that date of the material facts about the proposed arrangements or transactions resulting in the merger; or
 - (b) the merger results exclusively from the acceptance of offers to acquire shares in a body corporate and those offers—
 - (i) were all made before that time on that date; or

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- (ii) in so far as they were not so made, consist in offers made, by the same person and in respect of the same shares, in substitution for offers made before that time on that date.
- (5) In relation to a merger of two or more water enterprises—
- (a) the value of the assets taken over shall, for the purposes of subsection (3) above, be determined in accordance with section 67 of the Fair Trading Act 1973 by reference only to assets employed in or appropriated to a water enterprise; and
 - (b) the value of the assets of a water enterprise belonging to the person making the take over shall be taken for those purposes to be the value of such assets employed in or appropriated to that enterprise as by virtue of the exceptions in paragraph (a) of subsection (2) of that section are disregarded in determining the value of the assets taken over;
- and paragraph (b) of that subsection shall apply for determining the value of the assets referred to in paragraph (b) above as it applies in relation to the assets taken over.
- (6) For the purposes of subsections (3) and (5) above and of any determination in accordance with those subsections—
- (a) the assets treated as employed in or appropriated to a water enterprise carried on by a company holding an appointment under this Chapter, a statutory water company within the meaning of the 1973 Act or a water authority shall include all the assets for the time being of that company or authority;
 - (b) every water enterprise any of whose assets fall to be disregarded as mentioned in subsection (5)(b) above shall be treated as belonging to the person making the take over;
 - (c) the enterprises mentioned in paragraph (b) above shall be treated as separate enterprises in so far as they are carried on by different companies holding appointments under this Chapter or, in relation to any time before the transfer date, by different statutory water companies; and
 - (d) subsections (3) and (4) of section 67 of the Fair Trading Act 1973 (assets treated as appropriated to an enterprise and mergers over a period) shall apply as they apply for the purposes of, and of any determination in accordance with, subsection (2) of that section.
- (7) The Secretary of State shall not make a reference under this section in relation to the merger of any two or more enterprises, or in relation to any arrangements which will or may result in such a merger, if—
- (a) the merger of those enterprises has been; or
 - (b) arrangements that might result in the merger of those enterprises have been, the subject of a merger reference made before the passing of this Act under Part V of the Fair Trading Act 1973.
- (8) Nothing in this section shall prejudice any power of the Secretary of State, in a case in which he is not required to make a reference under this section, to make a merger reference under Part V of the Fair Trading Act 1973 in respect of any actual or prospective merger of two or more water enterprises.
- (9) In this section and section 30 below—
- (a) “enterprise” has the meaning given for the purposes of sections 64 to 77 of the Fair Trading Act 1973 by section 63(2) of that Act; and

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(b) references, in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part V of that Act, to be distinct enterprises;
and sections 66 and 66A of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this section and section 30 below as they have effect for the purposes of that Part.

(10) If the Secretary of State considers that it is appropriate for subsection (3) above to have effect with a reference in paragraph (b) to a different amount, or for the condition set out in that paragraph to be modified in any other respect, he may, in relation to mergers after the coming into force of the regulations, by regulations make such modifications of that paragraph and, for that purpose, of the other provisions of this section as may be prescribed.

30 References under section 29

(1) Subject to subsections (2) to (5) below, the Fair Trading Act 1973 shall have the effect in relation to any reference under section 29 above as if—

- (a) any such merger of two or more water enterprises as is required to be the subject of such a reference were a merger situation qualifying for investigation; and
- (b) a reference under that section were made under section 64 of that Act or, as the case may be, under section 75 of that Act (references in anticipation of a merger).

(2) Nothing in subsection (1) above shall have the effect in relation to any reference under section 29 above of applying—

- (a) so much of Part V of the Fair Trading Act 1973 as requires the Monopolies Commission to consider any of the matters set out in subsection (1) of section 64 of that Act; or
- (b) the provisions of sections 69(2) to (4) and 75(3) of that Act (power to restrict matters referred).

(3) In determining on a reference under section 29 above whether any matter operates, or may be expected to operate, against the public interest the Monopolies Commission—

- (a) shall have regard to the desirability of giving effect to the principle that the number of water enterprises which are under independent control should not be reduced so as to prejudice the Director's ability, in carrying out his functions by virtue of this Act, to make comparisons between different such water enterprises; and
- (b) shall have regard to the desirability of achieving any other purpose so far only as they are satisfied—
 - (i) that that other purpose can be achieved in a manner that does not conflict with that principle; or
 - (ii) that the achievement of that other purpose is of substantially greater significance in relation to the public interest than that principle and cannot be brought about except in a manner that conflicts with that principle.

(4) No order shall be made under Part V of the Fair Trading Act 1973 in consequence of any merger reference made under section 29 above in respect of an actual merger unless the reference was made within the appropriate time limit; and if on such a

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reference the Monopolies Commission are satisfied that the reference was not made within that time limit their report on the reference shall state that fact and nothing else.

- (5) For the purposes of subsection (4) above the appropriate time limit is—
- (a) in the case of a reference in respect of a merger which took place before the passing of this Act, the period of six months beginning with the day on which this Act is passed; and
 - (b) in any other case of a merger which has taken place before the reference, the period of six months beginning with whichever is the later of—
 - (i) the day on which the merger took place; and
 - (ii) the day on which the material facts about the transactions which resulted in the merger first came to the notice of the Secretary of State or the Director General of Fair Trading or were made public within the meaning of section 64 of the Fair Trading Act 1973.
- (6) In this section “water enterprise” has the same meaning as in section 29 above; and the reference to the number of water enterprises under independent control is a reference to the number of water enterprises there would be if two or more water enterprises counted as one enterprise wherever they would be treated for the purposes of Part V of the Fair Trading Act 1973 as having ceased to be distinct enterprises.

The Director’s register

31 The Director’s register

- (1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Chapter.
- (2) Subject to any direction given under subsection (3) below, the Director shall cause to be entered in the register the provisions of—
 - (a) every appointment under this Chapter, every termination or transfer of any such appointment, every variation of the area for which any company holds any such appointment and every modification of the conditions of any such appointment;
 - (b) every direction, consent or determination given or made under any such appointment by the Secretary of State, the Monopolies Commission or the Director himself;
 - (c) every final order made under section 20 above, every provisional order made or confirmed under that section, every revocation of such a final or provisional order and every notice under subsection (6) of that section;
 - (d) every undertaking given to and accepted by the Secretary of State or the Director for the purposes of subsection (5)(b) of that section; and
 - (e) every special administration order and every discharge of such an order.
- (3) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest, he may direct the Director not to enter that provision in the register; and the Director shall comply with any such direction.
- (4) The contents of the register shall be available for inspection by the public at such times and subject to the payment of such charges as may be specified in an order made by the Secretary of State.

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- (5) Any person may, on the payment of such fee as may be specified in an order so made, require the Director to supply him with a copy of, or extract from, the contents of any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.
- (6) The power to make an order under subsection (4) or (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Any sums received by the Director under this section shall be paid into the Consolidated Fund.
- (8) In this section “special administration order” means an order under section 23 above (whether made by virtue of that section or section 24 above).

Information and reports

32 Duty of undertakers to furnish information to the Secretary of State

- (1) It shall be the duty of a company holding an appointment under this Chapter and, in relation to any time before the transfer date, of any statutory water company within the meaning of the 1973 Act to furnish the Secretary of State with all such information relating to any matter which—
 - (a) is connected with, or with any proposals relating to, the carrying out by that company of the functions of a water undertaker or sewerage undertaker; or
 - (b) is material to the carrying out by the Secretary of State of any of his functions under this Act,as the Secretary of State may reasonably require.
- (2) Information required under this section shall be furnished in such form and manner, and be accompanied or supplemented by such explanations, as the Secretary of State may reasonably require.
- (3) The information which a company may be required to furnish to the Secretary of State under this section shall include information which, although it is not in the possession of that company or would not otherwise come into the possession of that company, is information which it is reasonable to require that company to obtain.
- (4) A requirement for the purposes of this section shall be contained in a direction which—
 - (a) may describe the information to be furnished in such manner as the Secretary of State considers appropriate;
 - (b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time; and
 - (c) may be given to a particular company, to companies of a particular description or to all the companies holding appointments under this Chapter.
- (5) The obligations of a water undertaker or sewerage undertaker under this section shall be enforceable under section 20 above by the Secretary of State.

33 Power to require information etc. for enforcement purposes

- (1) Where it appears to the Secretary of State or the Director that a company which holds an appointment under this Chapter may be contravening, or may have contravened—

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- (a) any condition of its appointment; or
 - (b) any statutory or other requirement enforceable under section 20 above,he may, for any purpose connected with such of his powers under sections 20 to 23 above as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.
- (2) A notice under this subsection is a notice signed by the Secretary of State or the Director and—
 - (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Secretary of State or the Director or to any person appointed by the Secretary of State or the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
 - (b) requiring that person, if he is carrying on a business, to furnish, at the time and place and in the form and manner specified in the notice, the Secretary of State or the Director with such information as may be specified or described in the notice.
- (3) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who, without reasonable excuse, fails to do anything required of him by a notice under subsection (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (2) above to produce shall be guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under subsection (2) above, the High Court may, on the application of the Secretary of State or the Director, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (7) Nothing in this section shall be construed as restricting any power of the Secretary of State or the Director under section 32 above or the conditions of an appointment under this Chapter to require a company holding such an appointment to produce any document to him or to furnish him with any information.

34 Publication of information and advice

- (1) The Secretary of State may arrange for the publication, in such form and in such manner as he considers appropriate, of such information relating to any matter which is connected with the carrying out by a company holding an appointment under this Chapter of the functions of a water undertaker or sewerage undertaker as it may appear to him to be in the public interest to publish.

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- (2) The Director may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it may appear to him to be expedient to give to any customer or potential customer of a company holding an appointment under this Chapter.
- (3) In arranging for the publication of any such information or advice the Secretary of State or the Director shall have regard to the need for excluding, so far as that is practicable—
 - (a) any matter which relates to the affairs of an individual, where the publication of that matter would or might, in the opinion of the Secretary of State or (as the case may be) of the Director, seriously and prejudicially affect the interests of that individual; and
 - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Secretary of State or (as the case may be) of the Director, seriously and prejudicially affect the interests of that body.

35 Reports by Director

- (1) The Director shall, as soon as practicable after the end of the year 1989 and of each subsequent calendar year make to the Secretary of State a report on—
 - (a) his activities during that year; and
 - (b) the Monopolies Commission's activities during that year so far as relating to references made by him.
- (2) Every such report shall—
 - (a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's functions; and
 - (b) set out any general directions given to the Director during that year under section 26(3) above.
- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) above before each House of parliament and shall arrange for copies of every such report to be published in such manner as he considers appropriate.
- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to any matters falling within the scope of his functions.
- (5) The Director may arrange for copies of any report prepared under subsection (4) above to be published in such manner as he considers appropriate.
- (6) In making or preparing any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 34(3)(a) and (b) above.

36 Reports by customer service committees

- (1) A customer service committee—
 - (a) shall prepare a report on any such matter as the Director may require; and
 - (b) may prepare a report concerning any matter which appears to the customer service committee to affect the interests of the customers or potential customers of a company allocated to the committee,

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and, as soon as reasonably practicable after preparing a report under this subsection, a customer service committee shall send a copy of the report to the Director.

- (2) As soon as reasonably practicable after the end of each financial year, a customer service committee shall prepare a report on its activities during that year and shall send a copy of that report to the Director.
- (3) The Director may arrange for any report which has been sent to him by virtue of this section to be published in such manner as he considers appropriate.
- (4) In publishing any report under this section the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in section 34(3)(a) and (b) above.