



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART II

#### APPOINTMENT AND REGULATION OF UNDERTAKERS

##### CHAPTER I

##### APPOINTMENTS

##### *Making of appointments*

#### **6 Appointment of relevant 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 relevant 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.
- (4) 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.
- (5) A company shall not be appointed to be a water undertaker <sup>F1</sup>or a sewerage undertaker] unless it is a limited company <sup>F2</sup>...
- <sup>F3</sup>(5A) A company shall not be appointed to be a relevant undertaker if it is <sup>F4</sup>a water supply licensee or sewerage licensee.]
- (6) As soon as practicable after making an appointment under this Chapter, the Secretary of State shall send a copy of the appointment to the Director.

#### Textual Amendments

- F1** Words in s. 6(5) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(b)(i)**
- F2** Words in s. 6(5) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(r), **Sch. 23 para. 28(4)(b)(ii)**
- F3** S. 6(5A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), **Sch. 8 para. 3**; S.I. 2005/2714, **art. 3(c)** (with [Sch. para. 8](#))
- F4** Words in s. 6(5A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 6**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(d)** (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

#### Modifications etc. (not altering text)

- C1** S. 6 applied (with modifications) (28.6.2013) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) Regulations 2013 \(S.I. 2013/1582\)](#), reg. 1(1)(b), **Sch. 1 para. 2** (with reg. 1(1)(c))

## 7 Continuity of appointments, replacement appointments etc.

- (1) It shall be the duty of the Secretary of State 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 both—
- (a) a company holding an appointment under this Chapter as water undertaker; and
- (b) 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.
- (2) Subject to the following provisions of this section—

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- (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.
- (3) 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 replacing that company as a relevant undertaker 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.
- (4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's appointment as water undertaker or, as the case may be, sewerage undertaker relates except where—
- (a) that company 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 that <sup>F5</sup>company;
  - (bb) the appointment or variation relates only to parts of that area and the conditions mentioned in subsection (5) below are satisfied in relation to each of the premises in those parts which are served by that company; 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 that company's appointment.
- <sup>F6</sup>[(5) The conditions are that—
- [ the premises are, or are likely to be, supplied with not less than the following
  - <sup>F7</sup>(a) quantity of water in any period of twelve months:
    - (i) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;
    - (ii) in all other cases, [<sup>F8</sup>50 megalitres] ; and]]
    - (b) the person who is the customer in relation to the premises consents in writing to the appointment or variation.
- (6) The Secretary of State may, after consulting the Director, make regulations amending subsection (5)(a) above by substituting, for the quantity of water for the time being specified there, such smaller quantity as he considers appropriate.

#### Textual Amendments

- F5** Words and para. (bb) in s. 7(4) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 40\(1\)](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt. I
- F6** S. 7(5)(6) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 40\(2\)](#): Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992 , art. 3, Sch. Pt. I
- F7** S. 7(5)(a) substituted (17.8.2000) by [S.I. 2000/1842, art. 2\(2\)](#)

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**F8** Words in s. 7(5)(a)(ii) substituted (1.4.2005) by [The Water and Sewerage Undertakers \(Inset Appointments\) Regulations 2005 \(S.I. 2005/268\)](#), **reg. 2(2)**

## **8 Procedure with respect to appointments and variations.**

- (1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.
- (2) Within fourteen days after making an application under this section, the applicant shall—
  - (a) serve notice of the application [<sup>F9</sup>on—
    - (i) the existing appointee,
    - (ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, 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,
    - (iv) the appropriate agency, and
    - (v) 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.
- (3) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall give notice—
  - (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.
- (4) A notice under subsection (3) 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 [<sup>F10</sup>on—
    - (i) the existing appointee,
    - (ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, 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,
    - (iv) the appropriate agency, and
    - (v) every] local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.

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- (5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, 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 <sup>F11</sup>on—
    - (i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
    - (ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, 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,
    - (iii) the appropriate agency, and
    - (iv) every] local authority whose area includes the whole or any part of the area to which the appointment or variation relates,

and as soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Secretary of State shall send a copy of the variation to the Director.

- (6) In this section “the existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

<sup>F12</sup>(6A) In this section “the appropriate agency”, in relation to the replacement of a relevant undertaker, means—

- (a) the Environment Agency, if the undertaker's area is wholly in England;
- (b) the NRBW, if the undertaker's area is wholly in Wales;
- (c) both the Environment Agency and the NRBW, if the undertaker's area is partly in England and partly in Wales.]

<sup>F13</sup>[(7) The Secretary of State may by regulations impose such additional procedural requirements as he considers appropriate for any case where the conditions mentioned in section 7(5) above are required to be satisfied in relation to an application for an appointment or variation replacing a company as a relevant undertaker.]

#### Textual Amendments

- F9** Words in s. 8(2)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 13(2)**, 94(2)(b)
- F10** Words in s. 8(4)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 13(3)**, 94(2)(b)
- F11** Words in s. 8(5)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 13(4)**, 94(2)(b)
- F12** [S. 8\(6A\)](#) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 13(5)**, 94(2)(b)
- F13** [S. 8\(7\)](#) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), **s. 40(3)**; [Competition and Service \(Utilities\) Act 1992 \(Commencement No. 1\) Order 1992](#), art. 3, Sch. Pt. I

## 9 Duties affecting making of appointments and variations.

- (1) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall consider any representations or objections which have been duly made in pursuance of the notice under section 8(3) above and have not been withdrawn.

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- (2) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State shall consult the Director.
- (3) In determining whether to make an appointment or variation by virtue of section 7(4)(b) above in relation to any part of an 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 that appointee.
- (4) It shall be the duty of the Secretary of State or, as the case may be, of the Director—
- (a) in making an appointment or variation replacing a company as a relevant undertaker; and
  - (b) 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 any water or drainage charges,
- 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.
- (5) In this section—
- “existing appointee”, in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;
- “new appointee”, in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;
- “water or drainage charges” means
- (a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage 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.

## **10 Transitional provision with respect to replacement appointments.**

Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

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