



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART II

#### APPOINTMENT AND REGULATION OF UNDERTAKERS

### CHAPTER III

#### PROTECTION OF CUSTOMERS ETC..

##### *General provisions*

#### **27 General duty of Director to keep matters under review.**

- (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
- <sup>[F1]</sup>(a) water undertakers or sewerage undertakers carry out functions; and
  - (b) <sup>[F2]</sup>water supply licensees or sewerage licensees] carry on activities authorised by their licences.]
- (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 Chapter I of this Part of the functions of relevant undertakers; or
  - <sup>[F3]</sup>(aa) the carrying on by <sup>[F4]</sup>persons] holding licences under Chapter 1A of this Part of the activities authorised by their licences; or]
  - (b) any <sup>[F5]</sup>company mentioned in paragraph (a) or (aa) above] ,
- 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—

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- (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 Parts II to V and VII of this Act 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 [<sup>F6</sup>the CMA] to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter relating to—
- (a) the functions of either description of relevant undertaker; or
  - (b) the carrying out of any such functions by a company holding an appointment under Chapter I of this Part [<sup>F7</sup> or
  - (c) the activities authorised by [<sup>F8</sup>the authorisations or combinations of authorisations given by licences under Chapter 1A of this Part (see sections 17A and 17BA)]; or
  - (d) the carrying on of any such activities by a [<sup>F9</sup>person] holding any such licence.]

#### Textual Amendments

- F1** S. 27(1)(a)(b) substituted (1.12.2005) for words by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(2\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F2** Words in s. 27(1)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 39\(2\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F3** S. 27(2)(aa) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(3\)\(a\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F4** Word in s. 27(2)(aa) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 39\(3\)\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F5** Words in s. 27(2)(b) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(3\)\(b\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F6** Words in s. 27(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 81](#) (with art. 3)
- F7** S. 27(4)(c)(d) and preceding word inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 12\(4\)](#); [S.I. 2005/2714, art. 3\(c\)](#) (with [Sch. para. 8](#))
- F8** Words in s. 27(4)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 39\(4\)\(a\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))
- F9** Word in s. 27(4)(d) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 39\(4\)\(b\)](#); [S.I. 2016/465, art. 2\(m\)](#), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462, art. 16](#))

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

- C1** S. 27 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. 8](#) (with reg. 1(1)(c)) (as amended (10.1.2015) by [The Water Industry \(Specified Infrastructure Projects\) \(English Undertakers\) \(Amendment\) Regulations 2015 \(S.I. 2015/22\)](#), regs. 1(1), 5)

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**C2** S. 27(4): functions exercisable by the Assembly concurrently with the Ministers of the Crown (W.) (1.7.1999) by [S.I. 1999/672](#), [art. 2](#), [Sch. 1](#)

## [<sup>F10</sup>27ZA Power to require information for purpose of monitoring

- (1) The Authority may, for the purpose of performing its duty under section 27(1) or (2), serve a notice under subsection (2) on—
  - (a) a water undertaker or sewerage undertaker;
  - (b) a water supply licensee or sewerage licensee.
- (2) A notice under this subsection is a notice which requires the person on whom it is served—
  - (a) to produce to the Authority, at a time and place specified in the notice (which must be reasonable), any documents specified or described in the notice which are in that person's custody or under that person's control, or
  - (b) to provide to the Authority, at a time and place and in the form and manner specified in the notice (which must be reasonable), information specified or described in the notice.
- (3) The requirements imposed by a notice under subsection (2) are enforceable by the Authority under section 18.
- (4) Nothing in this section requires a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duty imposed by this section).
- (5) In subsection (4) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).]

### Textual Amendments

**F10** S. 27ZA inserted (10.5.2022 for specified purposes) by [Environment Act 2021 \(c. 30\)](#), [ss. 85](#), [147\(3\)\(4\)](#) (with [s. 144](#)); [S.I. 2022/518](#), [regs. 1\(2\)](#), [2\(e\)](#)

## [<sup>F11</sup>The Consumer Council for Water

### Textual Amendments

**F11** Ss. 27A, 27B and preceding cross-heading inserted (1.8.2005 for specified provisions and purposes and 1.10.2005 for further specified provisions and purposes and 1.4.2006 otherwise) by [Water Act 2003 \(c. 37\)](#), [ss. 35\(1\)](#), [105\(3\)](#); [S.I. 2005/968](#), [art. 3\(a\)](#); [S.I. 2005/2714](#), [arts. 2\(a\)](#), [4\(b\)](#) (with [Sch. para. 8](#))

## 27A Establishment of the Council and committees

- (1) There shall be a body corporate to be known as the Consumer Council for Water (in this Act referred to as “the Council”) for the purpose of carrying out the functions of the Council under this Act.
- (2) In Welsh the Council may be known as “Cyngor Defnyddwyr Dŵr”.

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- (3) The Council shall not be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (4) The Council shall establish such committees of the Council—
  - (a) as the Assembly may direct, for relevant undertakers whose areas are wholly or mainly in Wales; and
  - (b) as the Secretary of State may direct, for other relevant undertakers.
- (5) A direction under subsection (4) above may provide for the allocation of each relevant undertaker to a committee specified in the direction.
- (6) The power to give a direction under subsection (4) above may not be exercised after the end of the period of six months beginning with the commencement of section 35 of the Water Act 2003.
- (7) After the end of the period mentioned in subsection (6) above the Council may (subject to paragraph 11 of Schedule 3A to this Act)—
  - (a) establish such committees for relevant undertakers as it considers appropriate; or
  - (b) alter the allocation of a relevant undertaker to a committee established under this section.
- (8) The Council shall ensure that each relevant undertaker is allocated to a committee established under this section.
- (9) A committee established under this section is referred to in this Act as a “regional committee”.
- (10) The purposes of a regional committee shall be—
  - (a) the provision of advice and information to the Council on consumer matters affecting the areas of the relevant undertakers allocated to that committee;
  - (b) such other purposes as the Council may determine.
- (11) The provisions of Schedule 3A to this Act (which makes further provision about the Council and regional committees) shall have effect.
- (12) The Council shall exercise and perform its powers and duties in the manner which it considers is best calculated to contribute to the achievement of sustainable development.
- (13) In this Chapter—
  - “consumers” includes both existing and future consumers;
  - “the interests of consumers” means the interests of consumers in relation to—
    - (a) the supply of water by means of a water undertaker’s supply system to premises either by water undertakers or by [<sup>F12</sup>water supply licensees] acting in their capacity as such; and
    - (b) the provision of sewerage services [<sup>F13</sup>either by sewerage undertakers or by sewerage licensees acting in their capacity as such]; and
  - “consumer matter” means any matter connected with the interests of consumers.

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### Textual Amendments

- F12** Words in s. 27A(13) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 40\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F13** Words in s. 27A(13) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 40\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

## 27B Co-operation between Council and other authorities

- (1) This section imposes duties on—
  - (a) the Authority and the Council;
  - (b) the Council and the Secretary of State; and
  - (c) the Council and the Assembly.
- (2) It shall be the duty of the bodies mentioned in each paragraph of subsection (1) above to make arrangements with a view to securing—
  - (a) co-operation and the exchange of information between them; and
  - (b) the consistent treatment of matters which affect both of them.
- (3) As soon as practicable after agreement is reached on any arrangements required by this section, the parties shall prepare a memorandum setting them out.
- (4) Arrangements under this section shall be kept under review by the parties.
- (5) As soon as practicable after agreement is reached on any changes to arrangements under this section, the parties shall revise their memorandum.
- (6) Parties to arrangements required by this section shall send a copy of their memorandum, and any revised memorandum, to each other person mentioned in subsection (1) above who is not a party to the arrangements set out in the memorandum (or revised memorandum).
- (7) The Secretary of State shall lay a copy of every memorandum or revised memorandum under this section before each House of Parliament.]

*[<sup>F14</sup>General functions of the Council*

### Textual Amendments

- F14** Ss. 27C-27G and preceding cross-heading inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 43\(1\)](#), [105\(3\)](#); [S.I. 2005/2714](#), [art. 2\(e\)](#) (with [Sch. 2 para. 8](#))

## 27C The interests of consumers

- (1) In considering the interests of consumers, the Council shall have regard to the interests of—
  - (a) individuals who are disabled or chronically sick;
  - (b) individuals of pensionable age;
  - (c) individuals with low incomes;
  - (d) individuals residing in rural areas; <sup>F15</sup>...

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- (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are [<sup>F16</sup>household premises (as defined in section 17C)] [<sup>F17</sup>and
- (f) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are below the consumption threshold and in the area of a relevant undertaker whose area is wholly or mainly in Wales,]

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

- (2) For the purposes of subsection (1) above, premises are [<sup>F18</sup>below the consumption threshold if the total quantity] of water estimated to be supplied to the premises annually for the purposes of subsection (2) of section 17D above is less than the quantity specified in that subsection.

#### Textual Amendments

- F15** Word in s. 27C(1) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 41\(2\)\(a\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F16** Words in s. 27C(1)(e) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 41\(2\)\(b\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F17** S. 27C(1)(f) and word inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 41\(2\)\(c\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F18** Words in s. 27C(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 41\(3\)](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

## 27D Acquisition and review of information

The Council shall have the function of obtaining and keeping under review—

- (a) information about consumer matters (including matters affecting consumers in different areas); and
- (b) information about the views of consumers on such matters (including the views of consumers in different areas).

## 27E Provision of advice and information to public authorities

- (1) The Council shall have the function of—

- (a) making proposals, or providing advice and information, about consumer matters (including matters affecting consumers in different areas); and
- (b) representing the views of consumers on such matters (including the views of consumers in different areas),

to public authorities, companies holding an appointment under Chapter 1 of this Part, [<sup>F19</sup>water supply licensees, sewerage licensees] and other persons whose activities may affect the interests of consumers.

- (2) Subject to subsection (7) below, information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.

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- (3) Information relating to a particular individual or body may be disclosed if—
- (a) the individual or body has consented to the disclosure;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to disclose any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
- (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its disclosure;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) Subject to subsection (7) below, the Council shall not in the exercise of its function under this section disclose any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) Subsections (2) to (5) above do not apply to a disclosure of information which is made to the Authority, the Secretary of State, the Assembly, the <sup>F20</sup>CMA] or any other public authority.
- (8) The disclosure by the Council of information in the exercise of its function under this section does not contravene section 206 below (restriction on disclosure of information).

#### Textual Amendments

- F19** Words in s. 27E(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 42](#); [S.I. 2016/465](#), art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F20** Word in s. 27E(7) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 82](#) (with art. 3)

## 27F Provision of information to consumers

- (1) The Council has the function of providing information to consumers about consumer matters in such form as appears to the Council to be most useful to the recipients.
- (2) That function may be exercised by—
- (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
  - (b) furnishing information to any consumer (whether in response to a request or otherwise).

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- (3) Information may only be disclosed in the exercise of that function if it is information that is available to members of the public from some other source.
- (4) The Council shall maintain at least one office in each of England and Wales at which consumers may apply for information.

## **27G Power to publish information and advice about consumer matters**

- (1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published in the exercise of the Council's function under this section unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—
  - (a) the individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
  - (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication of information under this section does not contravene section 206 below (restriction on disclosure of information).

## **<sup>F21</sup>27H Provision of information to the Council**

- (1) The Council may direct—
  - (a) the Authority;
  - (b) a company holding an appointment under Chapter 1 of this Part; <sup>F22</sup>...
  - (c) [<sup>F23</sup>a water supply licensee, or],

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[ a sewerage licensee,]  
<sup>F24</sup>(d)

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.

- (2) A body [<sup>F25</sup>or person] to whom a direction under this section is given shall, if the information specified or described in the direction is in its possession, comply with the direction as soon as reasonably practicable.
- (3) Before giving a direction under this section and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the body [<sup>F26</sup>or person] to whom the direction is given.
- (4) If a body [<sup>F27</sup>or person] to whom a direction under this section is given fails to comply with the direction [<sup>F28</sup>the body or person] shall, if so required by the Council, give notice to the Council of the reasons for [<sup>F29</sup>the] failure.

#### Textual Amendments

- F21** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))
- F22** Word in s. 27H(1)(b) repealed (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(a)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F23** Words in s. 27H(1)(c) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(b)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F24** S. 27H(1)(d) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(2)(c)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F25** Words in s. 27H(2) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F26** Words in s. 27H(3) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F27** Words in s. 27H(4) inserted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(3)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F28** Words in s. 27H(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(4)(a)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F29** Word in s. 27H(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 43(4)(b)**; S.I. 2016/465, art. 2(m), [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

## 27I Publication of notice of reasons

- (1) Subject to the following provisions of this section, the Council may publish a notice given to it under section 27H(4) above.
- (2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under subsection (1) above unless one or more of paragraphs (a) to (c) of subsection (3) below applies to the information.
- (3) Information relating to a particular individual or body may be published if—

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- (a) that individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.
- (4) Before deciding to publish any information relating to a particular individual or body in pursuance of subsection (3)(c) above, the Council shall—
  - (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (3)(c) above to the information or as to the desirability or otherwise of its publication;

and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (5) The Council shall not in the exercise of its function under this section publish any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (6) In considering whether information relates to any matter as mentioned in subsection (5) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.
- (7) The publication by the Council of information under this section does not contravene section 206 below (restriction on disclosure of information).

#### Textual Amendments

**F21** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 44, 105(3); S.I. 2005/2714, art. 2(d) (with [Sch. 2 para. 8](#))

## 27J Provision of information by the Council

- (1) Any of—
  - (a) the Authority;
  - (b) the Secretary of State; or
  - (c) the Assembly,

may direct the Council to supply to him or it, in such form as he or it may reasonably specify, such information specified or described in the direction as he or it may require for the purpose of exercising his or its functions.
- (2) The Council shall, if the information specified or described in the direction is in its possession, comply with a direction under this section as soon as reasonably practicable.
- (3) Where the Council fails to comply with a direction given under subsection (1) above it must give to the person who gave the direction notice of its reason for the failure, and that person may publish that notice in such manner as he considers appropriate.

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- (4) A person publishing a notice under this section shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

#### Textual Amendments

**F21** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))

### 27K Sections 27H to 27J: supplementary

- (1) The Secretary of State may make regulations prescribing—
- descriptions of information which a person to whom a direction is given under section 27H or 27J above may refuse to supply; or
  - circumstances in which such a person may refuse to comply with a direction given under either of those sections.
- (2) The Council may, if no person is prescribed for the purpose under subsection (3) below, refer a failure by a company holding an appointment [<sup>F30</sup>, a water supply licensee or a sewerage licensee] to comply with a direction under section 27H above to the Authority.
- (3) The Secretary of State may make regulations for the purpose of enabling a failure to comply with a direction under section 27H or 27J above to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.
- (4) A person to whom such a failure is referred (whether under subsection (2) above or regulations under subsection (3) above) shall—
- consider any representations made by either party;
  - determine whether the person failing to comply with the direction is entitled to refuse to do so, and, if not, order him to comply with the direction; and
  - give notice of his determination and any order under paragraph (b), with reasons, to both parties.
- (5) The duty of a company holding an appointment [<sup>F31</sup>, a water supply licensee and a sewerage licensee] to comply with an order under this section shall be enforceable by the Authority under section 18 above.
- (6) A notice under subsection (4) above may be published by either party to the reference.
- (7) Subsections (2) to (7) of section 27I above apply to the publication of a notice under this section as they apply to the publication of a notice given to the Council under section 27H(4) above.]

#### Textual Amendments

**F21** Ss. 27H-27K inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 44**, 105(3); S.I. 2005/2714, **art. 2(d)** (with [Sch. 2 para. 8](#))

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- F30** Words in s. 27K(2) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 44(2)**; [S.I. 2016/465](#), art. 2(m), **Sch. 1 para. 1(k)** (with **Sch. 2**) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)
- F31** Words in s. 27K(5) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 44(3)**; [S.I. 2016/465](#), art. 2(m), **Sch. 1 para. 1(k)** (with **Sch. 2**) (as amended (22.3.2017) by [S.I. 2017/462](#), art. 16)

## <sup>x1</sup>**28 Customer service committees.**

**F32** .....

### **Editorial Information**

- X1** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

### **Textual Amendments**

- F32** S. 28 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), ss. 35(4), 105(3), **Sch. 9 Pt. 2**; [S. I. 2005/2714](#), **art. 2(a)(m)**

## <sup>x2</sup><sup>F33</sup>**29 Consumer complaints**

- (1) This section applies to a complaint which any person ("the complainant") has against a relevant undertaker [<sup>F34</sup>, a water supply licensee or a sewerage licensee] in relation to any matter connected with the functions of that undertaker or the services provided [<sup>F35</sup>by that water supply licensee or that sewerage licensee].
- (2) Where a complaint to which this section applies (other than one appearing to the Council to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to subsections (3) and (8) below) investigate the complaint for the purpose of determining whether it is appropriate to take any action under subsection (9) below.
- (3) Where it appears to the Council that the complaint is one the Authority would be required to investigate under section 181 below, the Council shall, instead of investigating the matter to which it relates, refer the complaint to the Authority.
- (4) Where it appears to the Council that the complaint relates to a matter in respect of which a function under section 18 or 22A above is or may be exercisable by any person, the Council shall (unless it considers that that person already has notice of the matter) refer the matter to that person.
- (5) Where it appears to the Council that the complaint relates to a matter which constitutes or might constitute an offence, the Council shall refer the matter—
  - (a) to the Assembly, if the matter relates to a relevant undertaker whose area is wholly or mainly in Wales or to services provided<sup>F36</sup>—
    - (i) by a water supply licensee using the supply system of a water undertaker whose area is wholly or mainly in Wales, or
    - (ii) by a sewerage licensee using the supply system of a sewerage undertaker whose area is wholly or mainly in Wales]; or
  - (b) to the Secretary of State, in any other case.

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- (6) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority for determination under any provision of this Act, the Council shall, if the complainant consents, refer the matter to the Authority.
- (7) A referral under subsection (6) above shall have effect for the purposes of section 30A below as if it were a referral by the complainant of a dispute for determination by the Authority.
- (8) The Council is not required to investigate any matter if it appears to the Council that—
  - (a) it is unlikely that the complaint could be resolved by action taken by the relevant undertaker [<sup>F37</sup>, the water supply licensee or the sewerage licensee];
  - (b) the relevant undertaker [<sup>F38</sup>, the water supply licensee or the sewerage licensee] has not been given a reasonable opportunity to deal with the complaint; or
  - (c) in a case mentioned in subsection (4) or (5) above or (where the complainant does not consent to the matter being referred to the Authority) subsection (6) above, it is inappropriate to do so.
- (9) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this section, the Council shall make representations on behalf of the complainant to the relevant undertaker [<sup>F39</sup>, the water supply licensee or the sewerage licensee] about anything to which the complaint relates.
- (10) After investigating a complaint the Council may make a report to the Authority, the Secretary of State or the Assembly.
- (11) A report under subsection (10) above may include information about—
  - (a) any representations made by the Council under subsection (9) above; and
  - (b) the response of the relevant undertaker or the licensed water supplier to the complaint or any such representations.
- (12) No report under subsection (10) above or information about a complaint referred to the Council under this section, from which the complainant may be identified, shall be published or disclosed by the Council, the Authority, the Secretary of State or the Assembly in the exercise of any power under this Act without the consent of the complainant.
- (13) Where a representation made to the Authority, the Secretary of State or the Assembly about any matter (other than a representation appearing to the person to whom it is made to be frivolous or vexatious) appears to that person—
  - (a) to be about a matter which is or amounts to a complaint to which this section applies (other than one which, in the case of the Authority, it is its duty to investigate under section 181 below); and
  - (b) to have been made by or on behalf of the complainant,
 that person shall refer the matter to the Council.]

#### Editorial Information

- X2** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

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### Textual Amendments

- F33** S. 29 substituted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 46(1)**, 105(3); S.I. 2005/2714, **art. 2(f)** (with [Sch. paras. 3, 8](#))
- F34** Words in s. 29(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(2)(a)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F35** Words in s. 29(1) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(2)(b)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F36** Words in s. 29(5)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(3)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F37** Words in s. 29(8)(a) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(4)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F38** Words in s. 29(8)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(4)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)
- F39** Words in s. 29(9) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 45(4)**; S.I. 2016/465, **art. 2(m)**, [Sch. 1 para. 1\(k\)](#) (with [Sch. 2](#)) (as amended (22.3.2017) by S.I. 2017/462, art. 16)

### <sup>F40</sup>29A **Power of Council to investigate other matters**

- (1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers.
- (2) Before undertaking an investigation under this section the Council shall consult the Authority, the Secretary of State and the Assembly.
- (3) Where the Council has investigated a matter under this section it may make a report on that matter to the Authority, the Secretary of State, the <sup>F41</sup>CMA], the Assembly or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.
- (4) Subject to subsection (5) below, the Council may—
  - (a) send a report on any matter investigated under this section to any person who appears to the Council to have an interest in that matter; and
  - (b) publish any such report in such manner as the Council thinks appropriate.
- (5) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate)—
  - (a) shall not be included in a report which is to be sent to any person under subsection (4)(a) above, unless one or more of paragraphs (a) to (c) of subsection (6) below applies; and
  - (b) shall be excluded from any such report which is to be published under subsection (4)(b) above, unless one or more of paragraphs (a) to (c) of subsection (7) below applies.
- (6) Information relating to a particular individual or body may be included in a report to be sent under subsection (4)(a) above if—
  - (a) that individual or body has consented to the disclosure;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

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- (7) Information relating to a particular individual or body may be included in a report to be published under subsection (4)(b) above if—
- (a) that individual or body has consented to the publication;
  - (b) it is information that is available to the public from some other source; or
  - (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.
- (8) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of subsection (6)(c) or (7)(c) above, the Council shall—
- (a) consult that individual or body; and
  - (b) have regard to any opinion expressed by the Authority as to the application of subsection (6)(c) or (7)(c) above to the information or as to the desirability or otherwise of its inclusion in the report;
- and paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.
- (9) The Council shall not include in any report to be sent under subsection (4)(a) above or published under subsection (4)(b) above any information which it considers relates to any matter which is, or is likely to be, the subject of criminal proceedings.
- (10) In considering whether information relates to any matter as mentioned in subsection (9) above, the Council shall have regard to any opinion expressed (whether in relation to the information itself or to information of a description which applies to that information) by the Secretary of State, the Assembly or the Director of Public Prosecutions.]

**Textual Amendments**

- F40** S. 29A inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 47**, 105(3); S.I. 2005/2714, **art. 2(g)** (with [Sch. 2 para. 8](#))
- F41** Word in s. 29A(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), **art. 1(1)**, **Sch. 1 para. 83** (with **art. 3**)

**<sup>x3</sup>30 Duties of Director with respect to complaints**

**F42** ..... ]

**Editorial Information**

- X3** The insertion of the new cross-heading "General functions of the Council" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

**Textual Amendments**

- F42** S. 30 repealed (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 46(2)**, 105(3), **Sch. 9 Pt. 2**; S.I. 2005/2714, **art. 2(f)(m)** (with **Sch. paras. 3, 8**)

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### *[<sup>F43</sup>Further functions of Authority*

#### **Textual Amendments**

**F43** Ss. 30ZA, 30ZB and preceding cross-heading inserted (1.10.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 43(2), 105(3); S.I. 2005/2714, art. 2(c)** (with [Sch. 2 para. 8](#))

#### **30ZA Duty to consult Council**

- (1) It shall be the duty of the Authority to consult the Council in relation to the exercise of each of its functions, except where—
  - (a) the Council has indicated to the Authority (whether specifically or generally) that it does not wish to be consulted; or
  - (b) the Authority considers that it would be clearly inappropriate to consult the Council.
- (2) That duty is in addition to any duty on the Authority to consult the Council which is provided for elsewhere.

#### **30ZB Copies of notices**

Where the Authority is required by any provision of this Act to publish a notice or any other document, it shall send a copy of the document to the Council.

#### <sup>X4</sup>**[<sup>F44</sup>Determination of disputes by the Director.**

#### **30A**

- (1) In this section “relevant dispute” means a dispute which, by virtue of any provision of this Act, may be referred to the Director for determination under this section.
- (2) The practice and procedure to be followed in connection with the reference to the Director of any relevant dispute shall be such as he considers appropriate.
- (3) Where the Director determines any dispute under this section he shall give his reasons for reaching his decision with respect to the dispute.
- (4) On making a determination under this section the Director may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the Director) as he considers appropriate.
- (5) A determination under this section—
  - (a) shall be final; and
  - (b) shall be enforceable as if it were a judgment of [<sup>F45</sup>the county court], in so far as it includes such provision as to costs or expenses as is mentioned in subsection (4) above.
- (6) The Director shall not determine any relevant dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.
- (7) In including in any determination under this section any provision as to costs or expenses, the Director shall have regard to the conduct and means of the parties and any other relevant circumstances.]]

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### Editorial Information

- X4** The insertion of the new cross-heading "Further functions of Authority" in Pt. II Chapter III gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under that new heading.

### Textual Amendments

- F44** S. 30A inserted (1.9.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), [s.34](#); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, art. 4, Sch. Pt.II
- F45** Words in s. 30A(5) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

## Provisions with respect to competition

### 31 Functions of Director with respect to competition.

- (1) <sup>F46</sup>.....
- [<sup>F47</sup>(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the [<sup>F48</sup>CMA].
- (2A) This subsection applies to the functions of the [<sup>F49</sup>CMA] under Part 4 of the 2002 Act (other than sections 166 [<sup>F50</sup>171 and 174E]) so far as [<sup>F51</sup>those functions—
- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
  - (b) relate to] commercial activities connected with the supply of water or the provision of sewerage services.]
- [<sup>F52</sup>(3) The Director shall be entitled to exercise, concurrently with the [<sup>F53</sup>CMA], the functions of the [<sup>F53</sup>CMA] under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) [<sup>F54</sup>, 40B(1) to (4)] and 51), so far as relating to —
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
  - (b) conduct of the kind mentioned in section 18(1) of that Act, [<sup>F55</sup>or]
- [<sup>F56</sup>(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),]
- which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.]
- [<sup>F57</sup>(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) [<sup>F58</sup>above—
- (a) references] in Part 4 of the 2002 Act to the [<sup>F59</sup>CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 [<sup>F60</sup>, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise [<sup>F61</sup>requires);
  - (b) references in that Part to section 5 of the 2002 Act are to be construed as including references to section 27(1) and (2) of this Act.]

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[<sup>F62</sup>(4ZA) Section 130A of the 2002 Act is to have effect in its application in relation to the Authority] by virtue of subsections (2) and (2A)—

(a) as if for subsection (1) of that section there were substituted—

“(1) Where the Water Services Regulation Authority—

(a) is proposing to carry out its functions under section 27(1) and (2) of the Water Industry Act 1991 in relation to a matter for the purposes mentioned in subsection (2), and

(b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and

(b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with the supply of water or the provision of sewerage services (within the meaning given by section 219(1) of the Water Industry Act 1991)”.]

<sup>F63</sup>[(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to [<sup>F64</sup>the CMA] are to be read as including a reference to the Director ([<sup>F65</sup>except in sections 31D(1) to (6), 38(1) to (6)][<sup>F54</sup>, 40B(1) to (4)], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

[<sup>F66</sup>(5) Before the [<sup>F67</sup>CMA] or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(6) Neither the [<sup>F67</sup>CMA] nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]

(7) It shall be the duty of the Director, for the purpose of assisting [<sup>F68</sup>a CMA group] in carrying out an investigation on a [<sup>F69</sup>market investigation reference made by the Authority (under section 131 of the 2002 Act)] by virtue of subsection (2) <sup>F70</sup>... above, to give to the [<sup>F71</sup>group] —

(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 [<sup>F71</sup>group] for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the [<sup>F71</sup>group] without any such request; and

(b) any other assistance which the [<sup>F71</sup>group] may require, and which it is within his power to give, in relation to any such matters;

and the [<sup>F71</sup>group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

[<sup>F72</sup>(7A) In subsection (7) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

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- (8) If any question arises as to whether subsection (2) or (3) above <sup>F73</sup> . . . 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) [<sup>F74</sup>Part 4 of the 2002 Act]; or
- <sup>F75</sup>[(b) Part I of the Competition Act 1998 ([<sup>F76</sup>other than sections 31D(1) to (6), 38(1) to (6)][<sup>F77</sup>, 40B(1) to (4)] and 51),]
- by or in relation to the Director on the ground that it should have been done by or in relation to [<sup>F78</sup>the CMA] .
- [<sup>F79</sup>(8A) Section 117 of the 2002 Act (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the [<sup>F80</sup>CMA] included references to the Director.]
- (9) <sup>F81</sup> . . . . .

#### Textual Amendments

- F46** S. 31(1) ceases to have effect (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, Sch. 25 para. (8) (a), Sch. 26; [S.I. 2003/766](#), art. 2, Sch. (with transitional and transitory provisions in art. 3)
- F47** S. 31(2)(2A) substituted (20.6.2003) for s. 31(2) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, [Sch. 9 para. 19\(2\)](#); [S.I. 2003/1397](#), {art. 2(1)}, Sch.
- F48** Word in s. 31(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 84\(2\)](#) (with art. 3)
- F49** Word in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 84\(3\)\(a\)](#) (with art. 3)
- F50** Words in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 84\(3\)\(b\)](#) (with art. 3)
- F51** Words in s. 31(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 84\(3\)\(c\)](#) (with art. 3)
- F52** S. 31(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, [Sch. 2 para.4\(2\)\(a\)](#)
- F53** Word in s. 31(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 84\(4\)](#) (with art. 3)
- F54** Words in s. 31(3)(4A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 5](#); [S.I. 2014/416](#), art. 2(1)(f) (with Sch.); [S.I. 2014/416](#), art. 2(1)(f) (with Sch.)
- F55** Word in s. 31(3)(b) inserted (31.12.2020) by [S.I. 2019/93](#), Sch. 1 para. 4(2) (as substituted by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), [16](#))
- F56** S. 31(3)(c) substituted for s. 31(3)(c)(d) by [S.I. 2019/93](#), Sch. 1 para. 4(3) (as substituted by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), [16](#))
- F57** S. 31(4) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, [Sch. 9 para. 19\(3\)](#); [S.I. 2003/1397](#), {art. 2(1)}, Sch.
- F58** Words in s. 31(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 84\(5\)\(a\)](#) (with art. 3)

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- F59** Word in s. 31(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(5)(b)** (with art. 3)
- F60** Words in s. 31(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(5)(c)** (with art. 3)
- F61** Words in s. 31(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(5)(d)** (with art. 3)
- F62** S. 31(4ZA) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(6)** (with art. 3)
- F63** S. 31(4A) inserted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(8)** (with s. 73); S.I. 1997/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F64** Words in s. 31(4A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(7)** (with art. 3)
- F65** Words in s. 31(4A) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), **reg. 5**, Sch. 2 para. 4(2)(b)
- F66** S. 31(5)(6) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, **Sch. 9 para. 19(4)**; S.I. 2003/1397, art. 2(1), Sch.
- F67** Word in s. 31(5)(6) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(8)** (with art. 3)
- F68** Words in s. 31(7) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(9)(a)(i)** (with art. 3)
- F69** Words in s. 31(7) substituted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(9)(a)(ii)** (with art. 3)
- F70** Words in s. 31(7) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 54(3), 74(3), **Sch. 10 Pt. II para. 5(5)(11)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F71** Word in s. 31(7) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(9)(b)** (with art. 3)
- F72** S. 31(7A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(10)** (with art. 3)
- F73** Words in s. 31(8) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(1), 178, 179, Sch. 9 para. 19(5)(a), **Sch. 26**; S.I. 2003/1397, **art. 2(1)**, Sch. (with savings in art. 10)
- F74** Words in s. 31(8) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, **Sch. 9 para. 19(5)(b)**; S.I. 2003/1397, art. 2(1), Sch.
- F75** S. 31(8)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. II para. 5(5)(12)** (with s. 73); S.I. 1998/2750, **art. 2(1)**; S.I. 2000/344, **art. 2 Sch.**
- F76** Words in s. 31(8)(b) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 5, **Sch. 2 para. 4(2)(c)**
- F77** Words in s. 31(8)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 5**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F78** Words in s. 31(8) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 84(11)** (with art. 3)

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- F79** S. 31(8A) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(9), 279, [Sch. 9 para. 19\(6\)](#); S.I. 2003/1397, art. 2(1), Sch.
- F80** Word in s. 31(8A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 84\(12\)](#) (with art. 3)
- F81** S. 31(9) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 168(1), 278, 279, [Sch. 9 para. 19\(7\)](#), [Sch. 26](#); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with savings in art. 10)

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

- C3** S. 31(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 54(3), [Sch. 10 para. 5\(1\)](#) (with s. 73); S.I. 1998/2750, [art. 2\(1\)](#); S.I. 2000/344, [art. 2 Sch.](#)  
S. 31(3) amended (1.3.2000) by 1998 c. 41, ss. 54, 66(5), [Sch. 10 Pt. 1 para. 5\(1\)](#) (with s. 73); S.I. 2000/344, [art. 2 Sch.](#)

**[<sup>F82</sup>32 Duty to refer merger of water or sewerage undertakings.**

[<sup>F83</sup>Subject to sections 33 and 33A below,] it shall be the duty of the [<sup>F84</sup>CMA to make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes] that it is or may be the case—

- (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 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.]

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**Textual Amendments**

- F82** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\)](#), ss. 70(1), 279; S.I. 2004/3233, [art. 2](#), Sch. (with transitional provisions and savings in arts. 3-5)
- F83** Words in s. 32 substituted (18.12.2015) by [Water Act 2014 \(c. 21\)](#), ss. 14(1), 94(3); S.I. 2015/1938, [art. 2\(d\)](#)
- F84** Words in s. 32 substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 85](#) (with art. 3)

**[<sup>F85</sup>33 Exclusion of small mergers from duty to make reference.**

- (1) The [<sup>F86</sup>CMA] shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to the [<sup>F86</sup>CMA] —
  - (a) that the value of the turnover of the water enterprise being taken over does not exceed or, as the case may be, would not exceed £10 million; or
  - (b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has a turnover the value of which does not exceed or, as the case may be, would not exceed £10 million.
- (2) For the purposes of subsection (1)(a) above, the value of the turnover of the water enterprise being taken over shall be determined by taking the total value of the turnover of the water enterprises ceasing to be distinct enterprises and deducting—
  - (a) the turnover of any water enterprise continuing to be carried on under the same ownership and control; or

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- (b) if there is no water enterprise continuing to be carried on under the same ownership and control, the turnover which, of all the turnovers concerned, is the turnover of the highest value.
- (3) For the purposes of subsection (1)(b) above—
  - (a) every water enterprise ceasing to be a distinct enterprise and whose turnover is to be deducted by virtue of subsection (2)(a) or (b) above shall be treated as a water enterprise belonging to the person making the take over; and
  - (b) water enterprises shall be treated as separate enterprises so far as they are carried on by different companies holding appointments under Chapter 1 of this Part.
- (4) For the purposes of this section the turnover of a water enterprise shall be determined in accordance with such provisions as may be specified in regulations made by the Secretary of State.
- (5) Regulations under subsection (4) above may, in particular, make provision as to—
  - (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover; and
  - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (6) Regulations under subsection (4) above may, in particular, make provision enabling the Secretary of State or the [<sup>F87</sup>CMA] to determine matters of a description specified in the regulations (including any of the matters mentioned in paragraphs (a) and (b) of subsection (5) above).
- [<sup>F88</sup>(6A) The CMA must—
  - (a) keep under review the conditions set out in subsection (1)(a) and (b), and
  - (b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.]
- (7) The Secretary of State may by regulations amend subsection (1) above so as—
  - (a) to alter the sum for the time being mentioned in paragraph (a) of that subsection or otherwise to modify the condition set out in that paragraph; or
  - (b) to alter the sum for the time being mentioned in paragraph (b) of that subsection or otherwise to modify the condition set out in that paragraph.
- (8) Regulations under subsection (7) above—
  - (a) shall not make any modifications in relation to mergers on or before the coming into force of the regulations; and
  - (b) may, in particular, include supplemental, consequential or transitional provision amending or repealing any provision of this section.
- (9) References in this section to enterprises being carried on under the same ownership and control shall be construed in accordance with Part 3 of the 2002 Act.]

#### Textual Amendments

**F85** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, **Sch.** (with transitional provisions and savings in **arts. 3-5**)

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- F86** Word in s. 33(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 86** (with art. 3)
- F87** Word in s. 33(6) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 86** (with art. 3)
- F88** S. 33(6A) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 15**, 94(2)(c)

### **[<sup>F89</sup>33A Exceptions to duty to make reference**

- (1) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(a) if it believes that—
  - (a) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a merger reference;
  - (b) the prospective merger is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
  - (c) the prospective merger is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (2) The CMA may decide not to make a merger reference under section 32 as regards a case falling within section 32(b) if it believes that—
  - (a) the merger has not prejudiced and is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
  - (b) the merger has prejudiced or is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (3) Before forming a view as to the matters in subsection (1)(b) or (c) or (2)(a) or (b), the CMA must—
  - (a) request the Authority to give an opinion under section 33B, and
  - (b) consider that opinion.
- (4) The CMA may not make a merger reference under section 32 if—
  - (a) it is considering whether to accept an undertaking under section 33D instead of making such a reference; or
  - (b) it is prevented by section 74 of the Enterprise Act 2002 (effect of accepting an undertaking in lieu), in a case where that section as applied by paragraph 1 of Schedule 4ZA may have effect to prevent such a merger reference.
- (5) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA.

#### **Textual Amendments**

- F89** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

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### 33B Opinion of the Authority

- (1) Where the CMA makes a request under section 33A(3), the Authority must give its opinion on—
  - (a) whether and to what extent the actual or prospective merger has prejudiced or is likely to prejudice the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises, and
  - (b) where it forms the view that the actual or prospective merger has prejudiced or is likely to prejudice that ability, whether the prejudice in question is outweighed by any relevant customer benefits relating to the merger.
- (2) In forming an opinion on the matters in subsection (1), the Authority must apply the methods set out in the statement under section 33C that has effect when the request under section 33A(3) is made.
- (3) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of this section as references to what the Authority believes.

#### Textual Amendments

**F89** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

### 33C Statement of methods

- (1) The Authority must prepare and keep under review a statement of the methods to be applied in forming an opinion on the matters in section 33B(1).
- (2) The statement must in particular set out—
  - (a) the criteria to be used for assessing the effect of any particular water enterprise ceasing to be a distinct enterprise on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises;
  - (b) the relative weight to be given to the criteria.
- (3) Before preparing or altering the statement, the Authority must consult—
  - (a) the Secretary of State,
  - (b) the Welsh Ministers,
  - (c) the CMA, and
  - (d) relevant undertakers.
- (4) The Authority must from time to time publish the statement as it has effect for the time being.]

#### Textual Amendments

**F89** Ss. 33A-33C inserted (6.4.2015 for the insertion of s. 33C, 18.12.2015 in so far as not already in force) by [Water Act 2014 \(c. 21\)](#), **ss. 14(2)**, 94(3); S.I. 2015/773, art. 2(2)(a); S.I. 2015/1938, art. 2(d)

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### [<sup>F90</sup>33D Undertakings in lieu of a merger reference

- (1) If the CMA considers that it is under a duty to make a merger reference under section 32, it may instead of making such a reference accept undertakings to take such action as it thinks appropriate from such of the parties concerned in the actual or prospective merger as it considers appropriate.
- (2) The power under subsection (1) is to be exercised for the purpose of remedying, mitigating or preventing the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises that the actual or prospective merger has had, may have had or may be likely to have.
- (3) In forming a view for the purposes of subsection (1) as to whether it is under a duty to make a merger reference under section 32, the CMA—
  - (a) is to disregard the effect of section 33A(4)(a), but
  - (b) is to take into account the powers under section 33A(1) and (2) to decide not to make a merger reference.
- (4) In proceeding under subsection (1), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudicial effect on the Authority's ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises.
- (5) In proceeding under subsection (1), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the actual or prospective merger.
- (6) Before deciding whether or not to accept an undertaking under this section, the CMA must—
  - (a) request the Authority to give its opinion on the effect of the undertakings offered, and
  - (b) consider the Authority's opinion.
- (7) Where the CMA makes a request under subsection (6), the Authority must give its opinion on the effect of the undertakings offered.
- (8) An undertaking under this section—
  - (a) comes into force when accepted;
  - (b) may be varied or superseded by another undertaking under this section;
  - (c) may be released by the CMA.
- (9) An undertaking under this section ceases to be in force if an order under section 75 or 76 of the Enterprise Act 2002 (powers to make an order where an undertaking is not fulfilled) is made, in a case where that provision of the Enterprise Act 2002 as applied by paragraph 1 of Schedule 4ZA may have effect in relation to such an undertaking.
- (10) The CMA must consider any representations received by it in relation to varying or releasing an undertaking under this section as soon as reasonably practicable.
- (11) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the CMA believes are to be read for the purposes of subsection (7) as references to what the Authority believes.]

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#### Textual Amendments

**F90** S. 33D inserted (18.12.2015) by [Water Act 2014 \(c. 21\)](#), **ss. 14(3)**, 94(3); S.I. 2015/1938, art. 2(d)

### [<sup>F91</sup>34 Application of provisions of Enterprise Act 2002

The provisions of Schedule 4ZA to this Act shall have effect with respect to mergers of water enterprises.]

#### Textual Amendments

**F91** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, **Sch.** (with transitional provisions and savings in [arts. 3-5](#))

### [<sup>F92</sup>35 Construction of merger provisions.

- (1) In this Chapter (including Schedule 4ZA)—
  - “enterprise” has the same meaning as in Part 3 of the 2002 Act; and
  - “water enterprise” means an enterprise carried on by a [<sup>F93</sup>relevant undertaker].
- (2) References in this Chapter (including Schedule 4ZA), 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 3 of the 2002 Act, to be distinct enterprises; and sections 27 and 29 of that Act and any provision made under section 34 of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter (including Schedule 4ZA) as they have effect for the purposes of that Part.
- (3) Nothing in sections 32 to 34 above (including Schedule 4ZA) shall prejudice any power of the [<sup>F94</sup>CMA] or the Secretary of State, in a case in which, or to any extent to which, the [<sup>F94</sup>CMA] is not required to make a reference under section 32 above, to make a reference under Part 3 of the 2002 Act in respect of any actual or prospective merger of two or more water enterprises.
- (4) Where two or more enterprises have merged or will merge as part of transactions or arrangements which also involve an actual or prospective merger of two or more water enterprises, Part 3 of the 2002 Act shall apply in relation to the actual or prospective merger of the enterprises concerned excluding the water enterprises; and references in that Part to the creation of a relevant merger situation shall be construed accordingly.
- (5) Subject to subsections (3) and (4), Part 3 of the 2002 Act shall not apply in a case in which the [<sup>F95</sup>CMA] is required to make a reference under section 32 above except as applied by virtue of Schedule 4ZA.]

#### Textual Amendments

**F92** Ss. 32-35 substituted (29.12.2004) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 70(1)**, 279; S.I. 2004/3233, **art. 2**, **Sch.** (with transitional provisions and savings in [arts. 3-5](#))

**F93** S. 35(1): words in definition of “water enterprise” substituted (29.12.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 101(1)**, 105(3), **Sch. 7 para. 27(2)**; S.I. 2004/2528, **art. 3** (with savings in [art. 4](#))

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**Changes to legislation:** *Water Industry Act 1991, CHAPTER III is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- F94** Word in s. 35(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 87](#) (with art. 3)
- F95** Word in s. 35(5) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 87](#) (with art. 3)

*<sup>F96</sup>Disclosure of arrangements for remuneration*

**Textual Amendments**

- F96** S. 35A and preceding cross-heading inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 50, 105(3); S.I. 2004/2528, [art. 2\(g\)](#)

**35A Remuneration and standards of performance**

- (1) This section applies to any company holding an appointment under Chapter 1 of this Part.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
  - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3) below; and
  - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to standards of performance in connection with the carrying out by the company of the functions of a relevant undertaker.
- (4) A description under subsection (2)(b) above must include in particular—
  - (a) a statement of when the arrangements were made;
  - (b) a description of the standards of performance in question;
  - (c) an explanation of the means by which the standards of performance are assessed; and
  - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) above must also state—
  - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3) above; or
  - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,
 and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) above must—
  - (a) include in particular the matters listed in subsection (4)(a), (b) and (c) above; and

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- (b) where the arrangements described are different from any arrangements described under subsection (2)(b) above, state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) above must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2) above—
  - (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
  - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
  - “remuneration” in relation to a director of a company—
    - (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
    - (b) includes remuneration in respect of any of his services while a director of the company;
  - “standards of performance”, in relation to any company, include any standards which are—
    - (a) set by or under any conditions of the company’s appointment under Chapter 1 of this Part;
    - (b) contained in or prescribed by regulations made under section 38(1)(b) or (2) or section 95(1)(b) or (2) below; or
    - (c) set or agreed to by the company.
- (11) Any requirement imposed by this section shall be treated as a statutory requirement enforceable under section 18 above by the Authority.]

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

- C4** [S. 35A](#) 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. 9](#) (with reg. 1(1)(c))

**Changes to legislation:**

Water Industry Act 1991, CHAPTER III is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 3 Ch. 2B inserted by [2014 c. 21 s. 12](#)
- s. 17(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(4)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17A(c) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(d) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(2)(ba) and word inserted by [2014 c. 21 Sch. 5 para. 4\(2\)\(b\)](#)
- s. 17R(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(7)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17AA(1)(ba)(bb) inserted by [2014 c. 21 Sch. 5 para. 5\(2\)](#)
- s. 17BA(5A) inserted by [2014 c. 21 Sch. 5 para. 7\(3\)](#)
- s. 17HA(9)(b)(ia) inserted by [2014 c. 21 Sch. 5 para. 16\(2\)](#)
- s. 23(2AA) inserted by [2014 c. 21 Sch. 7 para. 35\(4\)](#)
- s. 23(8)(9) inserted by [2014 c. 21 Sch. 7 para. 35\(10\)](#)
- s. 39E-39H inserted by [2021 c. 30 s. 78\(7\)](#)
- s. 87(7C)-(7F) inserted by [2012 c. 7 s. 35\(6\)](#)
- s. 94A-94E inserted by [2021 c. 30 s. 79](#)
- s. 95ZA(6) inserted by [2014 c. 21 Sch. 5 para. 39\(4\)](#)
- s. 96ZA(2)-(5) substituted for s. 96ZA(2) by [2014 c. 21 Sch. 5 para. 40](#)
- s. 106B(3A) inserted by [2014 c. 21 Sch. 7 para. 94](#)
- s. 117G(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(2\)](#)
- s. 117G(4)-(4D) substituted for s. 117(4) by [2014 c. 21 Sch. 5 para. 41\(3\)](#)
- s. 117G(6)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(4\)](#)
- s. 117K(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(2\)](#)
- s. 117K(5)(5A) substituted for s. 117(5) by [2014 c. 21 Sch. 5 para. 42\(3\)](#)
- s. 117L(9) inserted by [2014 c. 21 Sch. 5 para. 43\(3\)](#)
- s. 117N(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(2\)](#)
- s. 117N(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(3\)](#)
- s. 117N(11)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(4\)](#)
- s. 117O(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(2\)](#)
- s. 117O(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(3\)](#)
- s. 117S(7)-(9) inserted by [2014 c. 21 Sch. 5 para. 49](#)
- s. 119(2)(ab) inserted by [2003 c. 37 s. 89\(1\)\(a\)](#)
- s. 119(3) inserted by [2003 c. 37 s. 89\(1\)\(b\)](#)
- s. 121(1)(ba) inserted by [2003 c. 37 s. 89\(2\)\(a\)](#)
- s. 141DA inserted by [2021 c. 30 s. 81](#)
- s. 141DC inserted by [2021 c. 30 s. 83](#)
- s. 177K(7)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(4\)](#)
- s. 207D and cross-heading inserted by [2014 c. 21 s. 39](#)
- s. 207D(5) word repealed by [2014 c. 21 Sch. 5 para. 52\(a\)](#)
- s. 207D(5) words inserted by [2014 c. 21 Sch. 5 para. 52\(b\)](#)

- s. 213(1ZA) inserted by [2014 c. 21 Sch. 7 para. 119\(3\)](#)
- s. 213(1ZA) repealed by [2014 c. 21 Sch. 5 para. 53](#)