



Water Industry Act 1991

1991 CHAPTER 56

PART II

APPOINTMENT AND REGULATION OF UNDERTAKERS

CHAPTER I

APPOINTMENTS

[^{F1}Modification of appointment conditions: Wales]

[^{F1}16B [^{F2}CMA's] power of veto following report: supplementary

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (9) of section 16A above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 16A above, or publishing any notice under subsection (9) of that section, the [^{F3}CMA] must have regard to the following considerations before disclosing any information.
- (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [^{F3}CMA] thinks is contrary to the public interest.
- (4) The second consideration is the need to exclude from disclosure (so far as practicable)
 - (a) commercial information whose disclosure the [^{F3}CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (b) information relating to the private affairs of an individual whose disclosure the [^{F3}CMA] thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.

Changes to legislation: Water Industry Act 1991, Section 16B is up to date with all changes known to be in force on or before 23 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

(6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections [F⁴(6A),] (7) and (8) below, for the purposes of any investigation by the [F⁵CMA] for the purposes of the exercise of its functions under section 16A above, as they apply for the purposes of any investigations on references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

[Section 109 shall, in its application by virtue of subsection (6) above, have effect as F⁶(6A) if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with an investigation for the purposes of the exercise of its functions under section 16A of the Water Industry Act 1991.”, and

- (b) subsection (8A) were omitted.]

(7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—

- (a) subsection (2) were omitted;

[F⁷(b) after subsection (3), there were inserted—

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication by the CMA of a notice under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the CMA under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

- (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

(8) Section 111(5)(b) shall, in its application by virtue of subsection (6) above, have effect as if for sub-paragraph (ii) there were substituted—

- (ii) if earlier, the day on which a notice is published by the [F⁸CMA] under section 16A(9) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the [F⁸CMA] under section 16A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.

(9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences

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and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.

- (10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

Textual Amendments

- F1** Ss. 16A, 16B inserted (1.10.2004) by Water Act 2003 (c. 37), ss. **55(4)**, 105(3); S.I. 2004/2528, art. **2(h)** (with art. 4, Sch.)
- F2** Word in s. 16B heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 59(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Word in ss. 16B(2)-(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Word in s. 16B(6) 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. 76(2)** (with art. 3, Sch. 2 para. 2)
- F5** Word in s. 16B(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** S. 16B(6A) 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. 76(3)** (with art. 3, Sch. 2 para. 2)
- F7** S. 16B(7)(b) 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. 76(4)** (with art. 3, Sch. 2 para. 2)
- F8** Word in s. 16B(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 59(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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Changes and effects yet to be applied to :

- s. 16B(6A)(b) words substituted by S.I. 2019/93, Sch. 1 para. 4(3) (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.)

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