

These notes refer to the Water Act 2003 (c.37) which received Royal Assent on 20th November 2003

WATER ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: New Regulatory Arrangements, Etc

Sections 34 to 38 and Schedules 1 to 3 Establishment, etc of new bodies

97. Sections 34 to 38 make express provision in relation to the Assembly.
98.

Section 34 and Schedule 1: Water Services Regulation Authority.

This section adds a new section 1A to the Water Industry Act and repeals Section 1 and Schedule 1A of that Act.

99. *New Section 1A* establishes the Water Services Regulation Authority, and provides that it is a body corporate that performs its functions on behalf of the Crown. The Welsh name for this Authority is specified as the Awdurdod Rheoleiddio Gwasanaethau D#r.
100. Subsection (2) inserts a new Schedule 1A into the Water Industry Act which sets out the provisions for the appointment and conditions of members of the Authority, stipulating that the Authority comprises a chairman and at least two other members, to be appointed by the Secretary of State in consultation with the Assembly. The Schedule also provides for the appointment of staff to serve the Authority, for proceedings, including the delegation of functions, within the Authority, and for a code of practice.
101. Subsection (3) abolishes the office of the Director General of Water Services.
102.

Section 35 and Schedule 2: Consumer Council for Water.

This section adds two new sections 27A and 27B and a new Schedule 3A to the Water Industry Act 1991.

103. The intention of this section (along with Schedule 2) is to establish a new independent Consumer Council for Water (CCW), which may be known as ‘Cyngor Defnyddwyr D#r’ in Welsh.
104. Subsection (1) adds new sections 27A and 27B to the WIA. *New section 27A* creates the CCW as a body corporate and requires the Council to allocate undertakers to regional committees.
105. Subsections (4) to (6) in new section 27A give the Secretary of State and the Assembly (for undertakers wholly or mainly operating in Wales) power to direct the allocation of undertakers to regional committees for a six month period. Thereafter the Council may establish or abolish a regional committee, or alter an undertaker’s allocation, only with the consent of the Secretary of State or Assembly.

106. Subsections (9) to (13) in new section 27A set out the remit of regional committees and provides definitions of ‘consumers’, ‘the interests of consumers’ and ‘consumer matter’ in relation to the Council’s responsibilities. Broadly, the interests of consumers mean the interests of existing and future consumers of water and sewerage services (via the public networks). Subsection (12) adds a duty for the Council, to exercise and perform its duties in a manner that is best calculated to contribute to the achievement of sustainable development.
107. *New section 27B* requires the Council to make arrangements with the Authority, the Assembly and the Secretary of State to secure co-operation and to exchange information, and for consistent treatment of matters of concern. Arrangements are to be set out in a Memorandum of Understanding and are to be kept under review by the parties. Every memorandum should be circulated to the other bodies, and the Secretary of State is required to lay a copy of each memorandum before each House of Parliament.
108. Subsection (2) adds Schedule 3A to the WIA. This provides for the internal operation of the Council, including membership of the Council and the terms of appointment and remuneration of members, staff, annual reports to the Secretary of State, financial provisions and accounts, and committees, including regional committees.
109. Subsection (3) abolishes the existing customer service committees.
- 110.

Section 36: Transfer to Authority and Council of functions, property etc.

This section (along with Schedule 3) transfers the functions of the Director to the Authority and effectively removes all references in the Water Industry Act to the Director General of Water Services (or “the Director”), and replaces them with Water Services Regulation Authority (or “the Authority”). It also allows the Secretary of State to make transfer schemes for the transfer of property, rights and liabilities from the Director to the Authority or to the Council.

111.

Section 37: Conditions relating to costs of water regulation.

This section gives the Authority power to modify conditions of appointment of a company as a water or sewerage undertaker to provide for the recovery of the expenses of the Council, the expenses incurred in setting it up and the expenses incurred in abolishing the existing customer service committees.

112. Subsection (6) requires the Authority to consult water companies before making any such changes in their appointments.
113. Subsection (7) sets out that this power is only exercisable within two years of commencement.
114. Subsection (8) states that the Secretary of State may (after consulting the Assembly) issue directions to the Authority on the inclusion of payment conditions in the conditions of appointment.

115.

Section 38: Forward work programmes and annual reports.

This section adds two new sections (192A and 192B) to the WIA and repeals sections 193 and 194 of the same Act.

116. *New section 192A* requires both the Authority and, separately, the Council to publish before each financial year a forward work programme. The forward work programmes should contain a general description of projects apart from routine activities, which the Council or Authority plans to undertake during the year, including associated objectives

and an estimate of the overall expenditure for the year. The Authority and the Council must both consult on drafts of the programmes.

117. *New section 192B* requires the Authority to produce, for the Secretary of State, an annual report on its activities, and those of the Competition Commission in respect of any references made by it, during the previous financial year. The report shall include a general survey of development of matters falling within the scope of its functions, a report on progress of projects described in the forward work programme for that year, a summary of orders and penalties imposed and a report on any matter which it is required to report on as a result of a requirement by the Secretary of State or the Assembly.
118. The Secretary of State shall lay the report before each House of Parliament and publish it. A copy of each report must be sent to the Assembly, Council and Drinking Water Inspectorate.
119. Subsection (8) in new section 192B provides that the Authority shall have regard to excluding information which might be prejudicial to the interests of an individual or body.

Sections 39 to 42 Objectives of regulation of water industry

120. Provisions in sections 39 to 42 are devolved to the Assembly.
- 121.

Section 39: objectives and duties under WIA

This section amends section 2 of the WIA. New subsections (2A), (2B) and (2C) amend the general duties which affect the manner in which the Secretary of State and Authority exercise their specified functions under the WIA. They are given a new consumer objective to protect the interests of consumers of regulated water and sewerage services, wherever appropriate through promoting effective competition. They are under a duty to further that objective, to secure that the functions of water undertakers and sewerage undertakers are properly carried out throughout England and Wales, to secure that companies holding appointments are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of the functions specified in the conditions of their appointments, and to secure that the activities and functions of licensed water suppliers are properly carried out.

122. In determining the “interest of consumers” for the purpose of the consumer objective, the regulator should take into account the interests of all customers. However, the regulator should also have regard for consumers who are disabled or chronically sick, are of pensionable age, have low incomes or reside in rural areas. In addition, the regulator should have regard for customers of undertakers whose premises are not eligible for supply by licensed water suppliers. This is intended to enable the regulator to balance the interests of these and eligible customers.
123. New subsection (2E) empowers the Authority and Secretary of State, in exercising any function in relation to water, to have regard to any interests of consumers of gas, electricity and telecommunications services, which are affected by the carrying out of that function.
124. New subsection (3) provides that, subject to the primary duties in new section (2A), the Authority or the Secretary of State should carry out their duties in such a manner as to
 - promote efficiency and economy on the part of companies appointed as water and sewerage undertakers;
 - ensure that there is no undue discrimination in the fixing of water and drainage charges;

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- secure that the interests of customers and potential customers of such companies are protected as regards the sale of land;
 - ensure that the interests of customers and potential customers are also protected in relation to any activities undertaken by their water or sewerage undertaker that are unrelated to their functions as statutory undertakers, or in relation to the activities of any person who appears to be connected with the undertaker, including through the presentation of accounts in a suitable form; and
 - contribute to the achievement of sustainable development.
125. New subsection (4) provides that in exercising their powers and performing their duties set out in subsection (1), the Secretary of State and the Authority shall have regard to the principles of best regulatory practice, including transparency, accountability, proportionality, consistency and targeting.
126. Subsection (9) provides for the provisions of this section not to detract from other duties imposed on the Authority or Secretary of State.
- 127.

Section 40: Guidance to the Authority on social and environmental matters.

This section adds a new section 2A to the WIA. Similar provision was made in the Utilities Act 2000 for the gas and electricity industries.

128. The section allows the Secretary of State, or for water and sewerage undertakers whose areas are wholly or mainly in Wales, the Assembly, to issue statutory guidance to the Authority. The subject of the guidance is how the Authority might contribute to social and environmental policies.
129. Subsection (2) in new section 2A requires the Secretary of State and the Assembly, where practicable, to have regard to the costs and benefits which may be expected to result from the guidance.
130. Subsection (3) in new section 2A requires the Authority to have regard to any such guidance when discharging its statutory functions.
131. Subsections (4) to (8) in new section 2A set out the conditions under which the Secretary of State or the Assembly may issue guidance.
132. Subsection (9) in new section 2A requires the Secretary of State and the Assembly to publish any guidance.
- 133.

Sections 41 and 42: Standards of performance in relation to water supply and sewerage services.

Section 41 amends section 39 of the WIA. It extends the existing arrangement whereby the Secretary of State can make regulations in response to proposals for new or amended standards of performance only in response to a specific proposal from the Authority. The amendments made by this section will allow the Secretary of State to initiate such proposals as long as a number of criteria specified in the amended section are met.

134. A new subsection (A1) is inserted into section 39 of the WIA to allow the Secretary of State to make regulations either on application by the Authority, or otherwise under certain conditions.
135. Subsection (3) amends the list of bodies that must be served notice of an application by the Authority to include the Council and any other persons or bodies the Secretary of State may consider appropriate.

136. Subsection (6) inserts new subsections (4) – (8). These subsections allow the Secretary of State to make regulations under section 38 if no application has been made by the Authority, as long as he considers that the regulations will contribute to the attainment of policies relating to public health and the environment, or if not, that there are exceptional reasons why it is otherwise in the public interest that the regulations should be made. The subsections govern the procedure.
137. Similar amendments are made to section 96 of the WIA in relation to sewerage service, by section 42.

Sections 43 to 47 Functions of the Council

138. Certain provisions in sections 43 to 47 are devolved to the Assembly by way of the Transfer of Functions Order. In certain other cases, express provision is made in relation to the Assembly.

139.

Section 43: General functions of the Council.

This section adds seven new sections (27C to 27G, 30ZA and 30ZB) to the WIA.

140. *New section 27C* requires the Council to have regard for the interests of individuals that are disabled, chronically sick, of pensionable age, with low incomes, residing in rural areas, or not eligible to be supplied by a licensed water supplier alongside other consumers.
141. *New section 27D* requires the Council to obtain and review information about consumer matters, including consumer views on such matters, in different areas of England and Wales.
142. *New section 27E* gives the Council the function of making proposals, providing advice and information about consumer matters and representing consumer views to public authorities, water companies, licensed water suppliers, and any other body whose activities may affect the interests of the consumers.
143. Subsections (2)-(4) in new section 27E provide that the Council shall not disclose any information relating to a particular individual or body, unless the individual or body involved has given consent, the information is already available from another source or if it is the Council's opinion that the published information does not seriously and prejudicially affect the interests of the individual or body concerned.
144. In the last case the Council must consult the individual or body concerned and have regard to any opinion expressed by the Authority.
145. Subsections (5) and (6) in new section 27E put restrictions on the Council not to publish any information which relates to any matter which is or is likely to be the subject of criminal proceedings. The Council is also required in these circumstances to have regard of the opinion expressed by the Secretary of State, the Assembly or the Director of Public Prosecutions.
146. Subsection (7) in new section 27E states that the restrictions in subsections (2) to (5) do not apply to the disclosure of information to the Authority, the Secretary of State, the Assembly, the Competition Commission or any other public authority.
147. *New section 27F* gives the Council the function of providing information to consumers about consumer matters. This section only deals with information that is already available to the public. The intention is that the Council is able to bring together comparable information from different companies, or sources, and make it available (both on own initiative, and on request) in forms that are useful to consumers.
148. Subsection (4) in new section 27F requires the Council to maintain at least one office in both England and Wales, where the consumers can apply for information.

149. *New section 27G* gives the Council power to publish any information and advice about consumer matters, if it thinks it is in the interest of consumers. Subsection (3) in new section 27G restricts this power, so the Council cannot publish any information relating to a particular individual or body unless the person or body has given its consent to the publication or if the information is already available from another source or if it is the Council's opinion that the published information will not seriously and prejudicially affect the interests of the individual or body concerned.
150. Subsection (4) in new section 27G requires the Council in this last case to consult the individuals concerned and the Authority before publishing such information.
151. Subsections (5) and (6) in new section 27G puts restrictions on the Council not to publish any information which relates to any matter which is or is likely to be subject of criminal proceedings. The Council is required in these circumstances to have regard to the opinion expressed by the Secretary of State, the Assembly or the Director of Public Prosecutions.
152. *New section 30ZA* places a general duty on the Authority to consult the Council in relation to the exercise of its functions, except where the Council has requested not to be consulted or the Authority considers it to be clearly inappropriate. This general duty is in addition to any specific duties to consult the Council that are already in the Act (e.g. the requirement for the Authority to consult the Council about its code of practice in Schedule 1).
153. *New section 30ZB* requires the Authority to send to the Council a copy of any document it is required to publish under the terms of the WIA.

154.

Section 44: Provision of information to the Council.

This section adds four new sections (27H to 27K) to the WIA.

155. *New section 27H* grants the Council rights to direct the Authority, undertakers or licensed water suppliers to supply information it needs to carry out its functions. Those so directed must provide the information as soon as reasonably practicable and in the form the Council requires. The Council is required to have regard to the desirability of minimising the compliance burden for the Authority and the undertakers. If a body does not provide information sought by the Council, it must give the Council its reasons if the Council requires.
156. *New section 27I* allows the Council to publish reasons that the body gives for any refusal to supply it with information in its possession, provided that those to whom the information relates have consented, or it is already in the public domain, or it will not cause serious and prejudicial effects to those to whom it relates. The Council is obliged to consult such persons in this last case, and to consider the opinion of the Authority, before deciding whether to publish the reasons. Disclosure is also restricted where information relates to any matter which is, or likely to be, the subject of criminal proceedings. The Council, in deciding whether disclosure is appropriate in such cases, needs to consider the opinions of the Secretary of State, the Assembly or the Director of Public Prosecutions.
157. *New section 27J* enables the Authority, the Secretary of State or the Assembly to direct the Council to provide reasonable information which they require for the exercise of their functions. These bodies are entitled to reasons from the Council for a refusal to provide the information requested. These bodies may publish the reasons, subject to the need to exclude information the publication of which might cause serious and prejudicial effects to persons to whom it relates.
158. *New section 27K* gives the Secretary of State a power to make regulations setting out the categories of information which the Authority or an undertaker may refuse to provide

when the Council requests it, or the categories of information which the Council may withhold from the Authority or the Secretary of State when a request is made.

159. Subsection (2) in new section 27K provides that an undertaker's refusal to supply information to the Council can be referred to the Authority. Under subsection (3) in new section 27K the Secretary of State may provide through regulations for another person to adjudicate failures to comply with any directions under sections 27H or 27J.
160. Subsection (4) in new section 27K sets out the duties of an adjudicator. An order against a company issued under this section is enforceable by the Authority.
- 161.

Section 45: Provision of statistical information to consumers etc.

This section adds two new sections (38B and 95B) to the Water Industry Act 1991.

162. The new 38B gives the Council a duty to publish statistical information relating to consumer complaints (made to the Authority, the Council, the Assembly, the Secretary of State or directly to undertakers or licensed water suppliers and their representatives) and the handling of those complaints. The new 95B makes similar provision for sewerage undertakers.
163. The Council has discretion over the form and frequency of the publication of the statistics.
- 164.

Section 46: Consumer complaints.

This section inserts a new section 29 into the WIA. It sets out the circumstances in which the Council should seek to resolve consumer complaints against undertakers or licensed water suppliers, unless frivolous or vexatious. The Council has powers to obtain information relevant to a complaint from the undertaker, or licensed water supplier, concerned in order to facilitate the process of seeking to resolve the complaint in a satisfactory manner. The Council does not have the power to impose a settlement between the parties in any complaint, but is required to refer certain disputes to the Authority for resolution. The Council is required to refer the matter to the Secretary of State or Assembly (where the matter relates to an undertaker whose area is wholly or mainly in Wales) if an offence has been committed or is suspected. The Council, on concluding an investigation, may make a report to the Authority, Secretary of State or the Assembly. The contents of the report may not be disclosed or published by any party without the consent of any individual complainant that is or could be identified in the report. This section also requires consumer complaints made direct to the Secretary of State, the Assembly or the Authority to be referred to the Council, unless they are frivolous or vexatious.

165.

Section 47: Investigations by the Council.

This section adds a new section to the WIA. New section 29A gives the Council scope to carry out investigations relating to the interests of consumers where no specific complaint has been made. The Council is required to consult the Authority, the Secretary of State and the Assembly before embarking on such an investigation. After an investigation the Council may make a report to the Authority, the Secretary of State, the Assembly, the Office of Fair Trading or any other public authority that has an interest in the matter. The Council may also publish these reports, subject to certain restrictions on disclosure of information relating to individuals or bodies. Disclosure is also restricted where information relates to any matter which is, or likely to be, the subject of criminal proceedings. The Council, in deciding whether disclosure is appropriate in such cases, needs to consider the opinions of the Secretary of State, the Assembly or the Director of Public Prosecutions.

Sections 48 to 49 Enforcement of obligations
166.

Section 48: Financial penalties.

This section adds six new sections (22A to 22F) to the WIA and confers powers on an enforcement authority (the Authority, the Secretary of State, or the Assembly) to impose financial penalties on statutory undertakers and licensees.

167. *New section 22A* allows financial penalties to be imposed for contraventions of appointment conditions, licensees' conditions, statutory or other requirements, and failure to achieve standards of performance of water supply or sewerage services as prescribed under section 38(2) or 95(2) of the WIA. Subsections (1) and (2) allow for the case where a licensed water supplier has caused or contributed to a breach of an undertaker's condition of appointment or caused or contributed to an undertaker contravening a statutory or other requirement; or where an undertaker has caused or contributed to the breach of a licensed water supplier's licence or caused or contributed to the latter's contravening a statutory or other requirement. In those cases, the Authority may impose an appropriate penalty. This is to cater for the relationship between licensed water suppliers and undertakers where one may contribute to the contravention of a responsibility of the other party. References in sections 22A to 22C to contraventions include references to causing or contributing to a contravention.
168. The power does not apply to contraventions committed before the power comes into effect. Receipts from financial penalties are paid into the Consolidated Fund. The new power operates alongside existing order-making powers.
169. The penalty must be of a reasonable amount in all the circumstances of the case and in no instance should be more than 10% of the undertaker's annual turnover, as determined in an order by the Secretary of State. An enforcement authority is not able to impose a financial penalty under these provisions in respect of any infringement for which it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
170. There are procedural requirements for the imposition of a penalty, including requirements on the enforcement authority to publicise its intentions, give notices with prescribed information, and receive and consider comments from interested parties; procedures for modifying the penalty in the light of representations; and procedures for notifying the company concerned and interested parties of the final decision on the imposition of a penalty. The company may apply to the enforcement authority to pay a penalty in instalments.
171. *New section 22B* requires each enforcement authority to consult on and publish a statement of its policies with regard to the imposition of penalties and calculating their amount, and to take account of those policies when using these new powers.
172. *New section 22C* sets out time limits for the imposition of a penalty, related to the time at which the contravention occurred or, where applicable, the time at which enforcement action was initiated.
173. *New section 22D* makes provision for interest that if the penalty is not paid in full by the required date. However, if the company has made an application to the authority to alter dates of payment, the penalty need not be paid until this application is determined.
174. *New section 22E* provides for an appeal to the Court if a company seeks to question the validity of a penalty order on prescribed grounds. The requirement to pay a penalty is suspended until the case is determined. The court may cancel or reduce the penalty or extend the time-scale to pay. It may also require interest to be paid on the penalty, including on a reduced penalty.

175. *New section 22F* provides that where any part of a penalty has not been paid by the required date, the authority may recover the penalty and any accrued interest, as a civil debt, unless an application against the penalty has been made.

176.

Section 49: Enforcement of certain provisions.

This section amends the WIA. The enforcement authority currently has a duty to make an enforcement order in relation to a likely future contravention of a condition of appointment or statutory or other requirement, where a contravention has already taken place. Section 47 replaces this with a duty on the enforcement authority to act wherever there is likely to be a contravention of such a condition or requirement in future (whether or not a contravention has previously occurred).

177. This section accelerates the enforcement process by reducing the time for making representations in response to a notice of intention to issue an order from 28 days to 21 days. The new time limits do not apply to orders issued before the entry into force of the new provisions.

Section 50 Remuneration and standards of performance

178.

Section 50: Links between directors' pay and standards of performance

This section adds a new section 35A to the WIA. The section requires statutory undertakers to disclose whether or not they link the remuneration of the directors to standards of performance, and to give details of how any links affect remuneration.

179. The section requires this disclosure to be made as soon as reasonably practicable after the end of the disclosing company's financial year, and specifies what information must be disclosed.
180. Subsections (5) and (6) in new section 35A require statutory undertakers, when they make their disclosures about the last financial year, also to state the links between directors' remuneration and service standards that are in place for the current financial year. If they do not have any links, but have decided to introduce them in future, they must describe these. If the current or planned links are different from the previous year's, then the company must explain what differences may be expected to result from the change.
181. Under subsection (7) and (8) in new section 35A, statutory undertakers have to make their disclosures in a form with which the Authority is content, and publish them. The Authority can also publish them, though the intention is that it does not do so unless it felt that the publication by the company was in some way unsatisfactory.
182. The Authority is to enforce the disclosure requirement in the same way as if it were a condition of appointment.
183. Provisions in this section are devolved to the Assembly.

Sections 51 to 52 Miscellaneous

184.

Section 51: Reasons for decisions.

This section adds new section 195A to the WIA. This section requires the Authority, the Secretary of State and the Assembly to give reasons for key decisions that each of them take.

185. Where the obligation bites, the relevant authority is required by subsection (2) in new section 195A to produce a notice giving the reasons for its decision and to publish the

notice in a manner that it considers appropriate for bringing it to the attention of those likely to be affected by the decision and/or interested in the reasons contained in the notice. Subsection (3) in new section 195A requires that a copy of the notice should be sent to any statutory undertaker or licensed water supplier directly affected by the decision.

186. Subsections (4) and (5) in new section 195A restrict the application of this section in certain circumstances.

187.

Section 52: Co-operation between water regulators.

This section places a duty on the Secretary of State, the Assembly, the Environment Agency and the Authority to prepare a memorandum of understanding, with each of the others, to cover the co-operation and exchange of information between them and the consistency of treatment of matters which affect them both. The agreed documents are to be laid before Parliament.

Sections 53 to 55 The Competition Commission

188.

Section 53: Specialist members of the Competition Commission.

This section provides for the abolition of the Competition Commission's sector-specific utility panel for water. Instead the Utilities Panel, established under the Utilities Act 2000 to deal with electricity and gas references, now also deals with water references. The section allows members of the abolished panel to automatically become members of the Utilities Panel and permits them to continue work on outstanding references after the new statutory arrangements are in place.

189.

Section 54: Determination references under section 12 of the WIA.

This section amends section 12 of the WIA. It ensures that the same procedures apply to references to the Competition Commission under section 12 of the WIA (concerning determinations under conditions of appointment) as apply to the Commission in relation to proposals to modify conditions of appointment. It also sets down what the Commission must include in its report following a reference.

190. The section also expands the factors which the Commission may take into account in considering the costs associated with an undertaker's appeal against a determination made by the Authority on price controls. This measure will, in effect, give the Commission discretion to decide whether to include these costs in its calculations, having regard to the extent to which it is likely to support the undertaker's claim against the Authority.

191.

Section 55: Conditions of appointments under the WIA.

This section amends sections 14 and 16 of the WIA and inserts a new section 16A and 16B into that Act. It relates to conditions of appointment modification references made under section 16 the WIA.

192. The section enables the Competition Commission to review the Authority's proposal to modify conditions of appointment following the Commission's report on a reference. If it appears to the Commission that the proposed modifications are not requisite for the purpose of remedying or preventing the adverse effects specified in its report, the Commission is empowered to substitute its own modifications which are requisite for the purpose. This section sets out the procedure for notification by the Commission of its

intentions to substitute its own modifications and for consultation on the modifications themselves.

Section 56 and Schedule 4 Licensing of other water suppliers

193. Certain provisions in section 56 and Schedule 4 are devolved to the Assembly by way of the Transfer of Functions Order. Other provisions make express provision in relation to the Assembly.
- 194.

Section 56 and Schedule 4: Licensing of other water suppliers.

This section provides that Schedule 4 should have effect.

195. **Schedule 4** covers the licensing of new water suppliers, and inserts new sections 17A to 17R and new sections 66A to 66L into the Water Industry Act.
196. *New section 17A* establishes the licensing of new water suppliers to retail water and/or input water into the statutory undertakers' networks, and sets out the basis on which licensed water suppliers can supply customers.
197. Subsection (1) provides the Secretary of State with the power to grant licences. The Secretary of State can, after consulting the Assembly, authorise the Authority to grant licences on his behalf. A licence will include a retail authorisation and may include a supplementary authorisation. Licences will authorise their holders to carry on the relevant activities in England and Wales.
198. Subsections (2) to (6) detail the two types of authorisation. A retail authorisation (subsection (2)) enables the licence holder to use a water undertaker's supply system for the purpose of supplying water to a customer's premises. A licence which only contains this authorisation is described as a "retail licence". This enables the holder to purchase water from the undertaker to supply to its customers. This must be done through a wholesale agreement with the undertaker. Prospective licensees will therefore be able to apply to offer retail-only services if they do not have, or do not wish to develop, a source of water. Retail services could range from simply contracting with the customer to provide a supply (purchased from the undertaker) and billing them for this supply, to much wider services including water efficiency planning, metering and providing tailored customer services.
199. A supplementary authorisation (subsection (5)) also allows the licence holder to introduce water into the supply system in connection with a supply to customers' premises in accordance with its retail authorisation (but only for that purpose - they will not be authorised to introduce water for supply to anyone else). Licensed water suppliers may have their own sources, or may purchase water from a neighbouring undertaker to import into the 'local' undertaker's supply system through which they are supplying customers. This introduction must be done through an access agreement with the relevant undertaker. A licence including this type of authorisation is described as a "combined licence" (subsection (6)).
200. Before a combined licence is granted, there is a requirement for the Secretary of State and the Assembly to be consulted (or just the Assembly if the Secretary of State grants a licence). This is so that the Drinking Water Inspectorate (who exercise functions in relation to drinking water quality currently on behalf of the Secretary of State and the Assembly) are consulted (subsection (7)) so they can give their assessment as to the applicant's suitability to introduce water into the public supply network.
201. Subsection (3) excludes licensed water suppliers from supplying premises which are defined as household premises, or those that do not meet the threshold requirement. The competition framework set out in this Act applies only to non-household customers using at least the relevant consumption threshold. Premises may only be supplied by one licensed water supplier. The Authority will enforce the eligibility requirements using

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the enforcement machinery under section 18 of the Water Industry Act which will be applied to licensees. This will allow it to require action to be taken to rectify a breach of requirements.

202. Subsection (8) restricts licence holders to those who are limited companies. It also excludes water and sewerage undertakers from holding a licence, so they must create new associated companies in order to apply for a licence. This is to ensure the activities of undertakers and licensed water suppliers are kept distinct.
203. Subsections (9) and (10) allow the Authority to issue guidance, subject to approval by the Secretary of State following consultation with the Assembly, on factors that will be considered in determining the extent of a premises. An example may be where guidance was needed on the definition of a hospital site with a number of related buildings.
204. *New section 17B* provides for the procedure for the publication and revision of guidance under section 17A(9). Guidance issued or re-issued by the Authority must be published so as to bring it to the attention of persons likely to be affected by it. The Secretary of State, having first consulted the Assembly, must approve revised guidance before issue.
205. Subsection (5) defines the supply system of a water undertaker for the purposes of the new competition arrangements. A licence will authorise use by licensed water suppliers of undertakers' distribution networks, defined for the drinking water system (potable) as the water mains and other pipes from the undertaker's treatment works to its customer's premises. A licence will also be required to use non-potable networks (systems not used to supply drinking water) which are not connected to any potable system. Access to all other facilities (i.e. treatment works of a potable supply system and upstream from this) is outside the licensing regime.
206. Subsections (6) and (7) provide for the designation of undertakers' treatment works by the Secretary of State after consultation with the Assembly. The Secretary of State will publish a list of those treatment works. There may be a number of different types of treatment works on a system and the list will define the extent of the undertaker's supply system for the purposes of the licensing regime.
207. *New section 17C* defines 'household premises' in relation to section 17A(3)(a). Subsections (1) and (2) define household premises as those in which, or in any part of which, a person has his home, and where the main (principal) use of the premises is as a home. Therefore a large premises with an industrial use but a small caretaker's flat within it, would not qualify as household premises.
208. Subsections (3) and (4) give the Assembly in relation to supply systems of undertakers wholly or mainly in Wales, and the Secretary of State in relation to the supply systems of all other undertakers, the power to make regulations to decide what will and will not be included in the definition of household premises.
209. *New section 17D* defines the threshold requirement referred to in section 17A(3)(b).
210. Subsection (2) requires that the licensed supplier estimates, at the time when first entering into an undertaking to supply, that the total quantity to be supplied to the premises annually within the terms of the undertaking is not less than 50 megalitres. This would generally be expected to be the 12 month period following the beginning of supply, but could be another 12 month period if that period were not representative. For example, in order for a new industrial site to contract to be supplied when it is up and running, there might be a case for the expected use when the site is fully operational to be taken into account in the estimate. The Authority's guidance (subsection (3)) will specify the assumptions that might be appropriate in different circumstances. As long as the threshold requirement is met at the time the supply is agreed, a customer can continue to be supplied by the licensed water supplier even if their premises' consumption falls. The threshold requirement is in force at the time of (and each time of) a supply being first agreed between a licensed water supplier and a customer. This

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is in order not to discourage customers and licensed water suppliers from implementing water efficiency measures.

211. A licensed water supplier is required to follow the Authority's guidance on how it should estimate likely water use. Details on what form this guidance should take (and a mechanism for approval by the Secretary of State in consultation with the Assembly) are provided.
212. The Secretary of State, or for premises supplied by networks of undertakers which are wholly or mainly in Wales, the Assembly, may make regulations regarding the circumstances in which the threshold requirement will not apply, by providing for the circumstances when a licensee will not be regarded as entering into an agreement with a new customer. This power may be used for cases such as corporate reorganisations where a new agreement may be needed even though no real change in the supply relationship has occurred.
213. Subsections (8) to (11) enable the Secretary of State to alter, by regulations subject to affirmative resolution by Parliament, the threshold quantity, after consulting the Authority and such persons, as the Secretary of State considers appropriate. The new threshold will apply only to future agreements and the regulations may provide for it not to apply to undertakings that have been proposed but have not yet been concluded. This might be used, for example, where a determination on a proposed undertaking is with the Authority for resolution under section 17E.
214. Subsections (12) and (13) provide that the Assembly (and not the Secretary of State) will have the power to amend the threshold, for premises supplied using networks of undertakers wholly or mainly in Wales.
215. *New section 17E* enables the Authority to determine, where a proposal to supply is referred to it by a licensed water supplier (or its potential customer), whether a customer is eligible to be supplied with water by the supplier, in accordance with the retail authorisation. This will help customers and licensees to be certain that the supply meets the requirements of section 17A(3).
216. *New section 17F* establishes the application process for companies seeking to become licensed water suppliers and the procedure for the Secretary of State or the Authority, as appropriate, to grant water supply licences.
217. Subsections (1) to (3) provide for applications for either type of water supply licence authorisation (either a "retail licence" or a "combined licence"). They also cover applying for a variation to the existing authorisation; to extend from a retail to a combined licence; or change from a combined to retail authorisation. These subsections also provide for the application process to be prescribed by the Secretary of State, including the times within which representations about the applications can be made.
218. Provision is made in subsection (5) to allow certain aspects of the application process to be disapplied in certain cases. For example, should a combined licensed supplier wish to give up the supplementary authorisation, it might not be appropriate for them to go through a full licensing process in order to do so.
219. Subsection (7) lists the bodies to which a copy of a licence or variation should be sent for information when granted. These are the regulatory bodies for the water industry together with the Consumer Council for Water, statutory water and sewerage undertakers and other licensed water suppliers.
220. *New section 17G* allows the Secretary of State (or the Authority acting on his behalf) to include licence conditions in water supply licences.
221. Subsection (1) allows the Secretary of State or, if delegated, the Authority to include any conditions in the licence which seem necessary, bearing in mind their duties under

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Part 1 of the Water Industry Act (in particular section 2). It also allows for conditions requiring an initial and/or ongoing payment of a licence fee.

222. Licence conditions can be included which need not be connected with the supply of water or introducing water into the public supply network. This would allow the inclusion, for example, of licence conditions which regulated the behaviour of companies due to their association with undertakers.
223. Subsections (3) and (4) allow the inclusion of conditions which require the licensee to comply with directions given by specified bodies (the Secretary of State, the Authority, the Assembly, or the Environment Agency) on specific matters. Conditions can also require the licensed water supplier to do or not do things specified in the licence or only with the consent of a specified body. These provisions also allow for licence conditions which allow the specified body to determine specific questions arising in connection with the licence.
224. Licence conditions can be framed in a way that means they can be triggered (or not) according to specific circumstances, which are included in the condition itself. For example, a licence condition might be triggered when a licensed water supplier had a certain number of customers. This mechanism is in addition to other provisions to modify licence conditions generally.
225. *New section 17H* describes standard conditions for the water supply licence, and the procedure for excluding or modifying a particular standard condition when granting a licence. This system of standard conditions is modelled on that used in licensing in the gas and electricity markets. Standard conditions ensure that all licences of a particular type contain the same licence conditions as far as is appropriate (so that different standard conditions can be included for retail and combined licences). They also allow licence conditions to be modified collectively.
226. The Secretary of State is given the power to determine and is required to publish standard conditions for water supply licences, before the first time either type of licence is granted. Standard conditions may however be modified later by the Authority through the procedures outlined in the following sections.
227. The standard conditions of licences may specify that a provision within a licence may not come into effect until certain conditions or circumstances are satisfied. The standard conditions may also specify under what circumstances a particular condition may be suspended and/or then brought back into operation.
228. Subsection (5) states that standard conditions do not need to be written directly (in full) into a licence, but are incorporated by reference in the licence to those of the published standard conditions which are relevant to that licence.
229. Subsections (6) to (8) allow the Secretary of State or the Authority, when granting a licence, to exclude or modify any of the standard conditions of a particular licence, as considered appropriate to meet that licensed water supplier's circumstances. Before doing so, the Secretary of State (or the Authority) shall consult on the exclusions or modifications, giving notice of his (or its) intentions, setting out the impact of, and the reasons for the exclusions or modifications, and allowing for representations.
230. Subsection (9) provides that, during the consultation period, the Secretary of State (after consulting the Assembly) can direct the Authority not to exclude or modify any standard condition.
231. Subsection (10) sets out the general test for excluding or modifying any standard conditions. The granting authority must consider that the change will not unduly disadvantage any licence holder with respect to competing with any other licence holders.

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232. Subsection (11) ensures that where a standard condition is modified in part in a licence, the unmodified part of the condition continues to be considered as a standard condition of the licence. This provision is also included at 17I(6), 17O(9), 17P(9) and 17R(3).
233. *New section 17I* sets out the procedure by which the Authority can modify the conditions within a particular licence, with the consent of the licence holder. It mirrors the provisions for modifying individual gas and electricity licences set out in the Utilities Act 2000.
234. Subsection (2) enables the Authority to make changes to any condition in a particular licence, but only with the consent of the licence holder. Where a condition is to be modified, the Authority must also believe that the change is necessary and will not disadvantage the licence holder in competing with other licensed water suppliers or disadvantage other licensed water suppliers.
235. Subsections (3) and (4) set out the procedure for consulting interested parties about the proposed modification.
236. Subsection (5) gives the Secretary of State the power, after consulting the Assembly, to direct the Authority not to make the modification it was proposing to make.
237. *New section 17J* describes how the standard conditions of the water supply licence are modified. This is the mechanism for changing standard conditions for all licences containing the conditions which are being changed. The means that it is not necessary to obtain individual agreement of each licence holder. This mirrors the provisions for the modification of standard conditions in gas and electricity licences set out in the Utilities Act 2000. This is a mechanism to facilitate changes in licence conditions.
238. Subsection (2) gives the Authority the power to make any incidental or consequential modifications it considers necessary to any other relevant conditions of licences when it is modifying standard conditions.
239. Subsections (3) and (4) require that before the Authority makes any modifications under this section, it gives notice of its intentions, setting out the impact of, and the reasons for the modifications, and allowing for representations. These subsections also set out how the notice should be published and to whom copies should be sent.
240. Subsection (5) enables the Secretary of State, within the notice period, after consulting the Assembly, to direct the Authority not to make a change.
241. Subsections (6) and (7) allow the Authority to proceed with the proposed modifications of the standard conditions if, within the notice period, no objections are made by the relevant licence holders. If one or more licence holders object, then the Authority can go ahead if (a) the percentage of the relevant licence holders making objections is below a percentage specified by order and (b) the proportion of relevant licence holders (weighted according to market share) is below another percentage specified by order. The system of weighting for the purposes of (b) will be prescribed in secondary legislation.
242. Where one or more relevant licence holders object, the Authority can also go ahead with the proposed modifications if the effect is to remove or reduce burdens imposed by existing standard conditions whilst ensuring necessary safeguards are not removed and no licensed water supplier is disadvantaged by the change.
243. Subsection (11) requires that a draft of any statutory instrument containing an order under subsection (6) be approved by both Houses of Parliament using the affirmative resolution procedure.
244. Subsection (12) requires the Authority to publish the modified conditions to existing licences and incorporate them into new licences as it grants them.

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245. *New section 17K* sets out the procedure for the Authority to refer proposed modifications of licences to the Competition Commission. This largely parallels the existing procedure for undertakers, as well as the procedure set out in the Electricity Act 1989 and the Gas Act 1986.
246. Subsections (1) to (3) allow the Authority to refer proposed modification(s) to the Competition Commission, effectively asking it to consider the extent to which the proposed modification addresses matters which operate, or may operate, against the public interest. This includes modifications to the conditions of particular licences or the standard conditions. This is expected to be used if licensed water suppliers object to a modification to either the conditions of a particular licence or the standard conditions proposed by the Authority.
247. Subsections (4) and (5) allow the Authority to give its opinion to the Competition Commission on its concerns which the proposed modification is intended to remedy. It may vary a reference once made (subsection (3)) but must make this public. The Authority is also required to make the initial reference public and, in particular, send a copy to the affected licensees, Council, Secretary of State, the Assembly and Chief Inspector of Drinking Water.
248. Once the Secretary of State has received a copy of the reference, he has 28 days to decide whether to direct the Competition Commission not to investigate the reference or to ignore any variation to the reference. Assuming this power of veto is not exercised, the Authority is required to assist the Commission, in particular, by making relevant information available to it.
249. Subsection (9) requires the Competition Commission, in considering the reference, to have regard the Authority and Secretary of State's duties under Part 1 of the Water Industry Act.
250. *New section 17L* sets out the time limits in which the Commission reports on references to the Commission are to be made under section 17K. If the report is not made within the specified time period, then the Authority can choose to disregard it. However, the Authority may extend the reporting period once, if it has received a satisfactory representation from the Commission on why the period should be extended. The section sets out the procedures the Authority must follow when authorising an extension.
251. *New section 17M* applies sections 109-116 of the Enterprise Act 2002 in relation to modification references to the Commission in section 17K. Sections 109-116 set out the Commission's powers to require persons to give evidence and to provide specified documents and information needed. These will be applied to the Commission's investigations on modification references.
252. *New section 17N* sets out the procedure for the Commission to use in reporting on a reference made to it under section 17K.
253. Having considered a reference made under section 17K, the Commission must publish a report on its findings. This report will include conclusions on the questions raised in the reference and, if relevant, details and conclusions in relation to its public interest findings. If the Commission concludes that a licence modification would remedy the adverse public interest effects described, it has to specify such a modification (or modifications).
254. If the Commission's report concludes that modifications should be made to water supply licences, the Authority will only act to modify a condition under section 17O, (and the Commission will only be able to veto modification made by the Authority under new section 17P), if two-thirds of the group that made the report is in agreement.
255. Subsection (4) gives the Commission the defence of absolute privilege against the law of defamation for any report made under 17K.

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256. Subsections (6) to (8) list three considerations to which the Commission must have regard (as far as is practicable) before disclosing any information under 17K. First, the need to exclude any information that the Commission thinks is not in the public interest to publish. Second, the need to exclude any information that the Commission thinks could significantly harm legitimate business interests of the undertaking to which it relates, or an individual's private interests. Third, the extent to which the disclosure of the information is necessary for the purposes of the report.
257. Subsections (9) to (11) require the Commission to send its report to the Authority which, in turn, sends a copy to various bodies and in due course publishes it.
258. The Secretary of State is given 14 days in which to direct the Authority to remove any material which is against the public interest or commercially sensitive from the report before the Authority makes it public.
259. *New section 17O* sets out the procedure for the modification of licences by the Authority following a report from the Commission.
260. Subsection (1) states that if a report from the Commission concludes that matters specified in the reference act against the public interest and specifies a licence modification intended to remedy the effects described, then the Authority is required (subject to the other provisions in this section) to make an appropriate modification (or modifications) to the conditions of a particular licence or the standard conditions.
261. If the Authority proposes a modification of the standard conditions (under this section) it may also make minor incidental modifications to conditions of existing particular licences as a consequence.
262. Subsection (3) provides that in making modifications under section 17O the Authority is required to have regard to the modifications specified in the report.
263. The Authority must consult publicly on its proposed modification for at least 28 days. The parties consulted must include the Council, the Secretary of State, the Assembly and the Drinking Water Inspectorate. Having considered responses to the consultation, the Authority notifies the Commission of its intention to make the modification, and the reasons for doing so, and sends the Commission a copy of the responses to the consultation.
264. Subsection (8) requires the Authority to make the modification if the Commission does not veto the proposed modification within four weeks of the Authority's notice.
265. Modifications of standard conditions made by the Authority are to apply to existing licences and the standard conditions of future licences.
266. *New section 17P* sets out the Commission's power to veto a modification that the Authority proposes to make to either conditions of particular licences or to the standard conditions, in response to a report from the Commission made under section 17N.
267. If the Commission judges that the Authority's proposed modification(s) do not remedy the adverse effects in its report, this section gives the Commission the power to veto the Authority's modification by means of a direction and substitute its own. This parallels the procedure set out in the Utilities Act 2000.
268. The Commission is given four weeks after receiving the proposed modification from the Authority, to veto all or part of the modification. This period may be extended by 14 days by the Secretary of State on application by the Commission.
269. Subsection (3) allows the Commission to veto a proposed modification only if it does not have the desired effect set out in the Commission's report.
270. Subsections (4) to (6) require the Commission, if it vetoes the Authority's proposed modification, to publish a notice giving the reasons for its veto. It must then propose,

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and consult on, its alternative modification, with a consultation period of not less than 28 days. After considering responses to the consultation, the Commission can make a modification and publish a notice setting this out and its reasons for doing so.

271. Subsections (7) and (8) set out the processes that the Commission undertakes in order to bring any such modifications to the attention of persons likely to be affected by them.
272. Subsections (10) to (11) allow the Authority to make minor changes to existing licence conditions as a consequence of the Commission's modification. In addition, if the Commission modifies a standard licence condition, the Authority is required to make the same modifications to the standard conditions so that the modification is incorporated in all future licences.
273. *New section 17Q* gives the Commission the defence of absolute privilege, in relation to the law of defamation, when publishing information under subsections (4)(a), (6), or (8) of section 17P, but requires that the Commission have regard to certain considerations before publishing.
274. Subsections (3) to (5) list the three considerations to which the Commission must have regard (as far as is practicable) when publishing information under section 17P. First, the need to exclude any information that the Commission thinks is not in the public interest to disclose. Second, the need to exclude any information that the Commission thinks could significantly harm the legitimate business interests of the undertaking to which it relates, or an individual's private interests. Third, the extent to which the disclosure of the information is necessary for the purposes of the notice.
275. Subsections (6) to (10) modify and apply sections 109-116 of the Enterprise Act 2002 for the purposes of the Commission exercising its functions under section 17P. Sections 109-116 set out the Commission's powers to require persons to give evidence and to provide specified documents and information needed for the modification of licences.
276. *New section 17R* mirrors section 17 of the Water Industry Act (as it applies to undertakers and is modified by the Enterprise Act 2002). This allows modification of licence conditions as a result of merger investigations and market investigations under the Enterprise Act.
277. Subsections (1) and (2) provide for the Office of Fair Trading, the Commission or the Secretary of State to modify water supply licence conditions where any of those bodies have made an order as defined in subsection (2).
278. Subsections (3) to (4) contain provisions dealing with modifications to standard conditions similar to those found in section 17O subsections (2), (9) and (10).
279. *New section 66A* sets out the conditions which must be satisfied before a primary water undertaker (as defined in subsection (8)) is required to provide a wholesale supply of water to a licensed water supplier to enable it to supply its customers. This requirement only applies in respect of customers in the undertaker's appointed area.
280. Where a licensed supplier requests an undertaker to provide a supply of water for the purpose of supplying the premises of its customers, the undertaker is under a duty to take steps to enable the supply to be made and to provide that supply on certain terms agreed with the supplier or determined by the Authority. The undertaker must take any such steps as may be provided for under the agreement or determination for enabling the supply to be made. These steps may include, for example, connecting a new customer to the main.
281. The duty to provide a supply does not apply if certain conditions are satisfied. The duty does not apply if connecting the premises would result in a contravention of regulations made under section 74. This is to ensure that there is no contamination of the water supply from fittings in a customer's premises. If the premises to be supplied are not a building of some type (e.g. agricultural land) or if the supply is for non-domestic

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purposes, then the undertaker is in addition not under a duty to supply if it would put at risk its ability to meet all its other existing obligations to supply for domestic and other purposes together with its probable future water supply obligations to supply for domestic purposes. It may also refuse to supply water if it would incur unreasonable expenditure in so doing.

282. Subsection (7) allows the undertaker to recover from the licensee certain expenses incurred in taking the steps referred to in subsection (2) even if the undertaker was not able to make the supply because it could not obtain necessary authorisations or agreements. For example, if the undertaker failed to obtain necessary permissions to lay pipes, it would nevertheless be able to recover the cost of attempting to do so.
283. *New section 66B* sets out the conditions on which water undertakers are required to allow licensed water suppliers holding a combined licence to introduce water to their supply systems.
284. Subsection (1) limits the duty to cases where a request for introduction of water to the supply system is in connection with a specific supply to a customer under the licensed water supplier's retail authorisation. In reality, the water introduced by the combined licensee, having mixed with other water in the undertaker's pipes etc. will not necessarily be the same water that arrives at the customer's premises. In addition, the licensed water supplier's customer must be within the undertaker's appointed area.
285. Subsection (2) provides that the undertaker will also be under this duty where it has agreed (outside the competition provisions in these sections) to treat a licensed water supplier's water so that it can be introduced into the supply system and, in connection with that introduction, the licensed water supplier requests that the undertaker permit the licensee to then introduce water into the supply system for supply to its customers.
286. Subsection (3) places a duty on a water undertaker who receives a request under section 66B to take steps to permit the introduction of water into its supply system and to permit the introduction on certain terms agreed with the supplier or determined by the Authority. These steps may include laying a pipe to connect the licensed water supplier's treatment works (or source in the case of non-potable supply) with the undertaker's supply system. The steps also include making a connection to the customer where required.
287. The duty to provide a supply does not apply if certain conditions are satisfied. Undertakers may refuse a request made by a licensed water supplier for the introduction of water, if this would put at risk specified obligations or in certain circumstances would require unreasonable expenditure in carrying out works. Therefore, undertakers have to be satisfied that any access agreement with a licensee will ensure that appropriate safeguards are put in place in a range of areas. This will include for example water quality matters; undertakers will have to be satisfied that any proposed actions of a licensed water supplier will not adversely affect the quality of water supplied.
288. The duty also does not apply if connecting the premises of the licensed water supplier's customer would result in a contravention of regulations made under section 74 of the Water Industry Act 1991.
289. Subsection (7) allows the undertaker to recover from the licensed water supplier certain expense in taking the steps referred to in subsection (3), even where the undertaker was not able to make the supply because it could not obtain necessary authorities and agreements (in the same way as sections 66A(7) and 66C(7)).
290. Subsections (9) and (10) allows the Secretary of State (after consultation with the Assembly) to publish a list of treatment works used by licensed suppliers to treat water introduced into the supply system (this is separate to the list of undertakers' treatment works referred to in section 17B(6)). The designation is relevant to undertakers' obligations to take steps to permit the introduction of water into their systems. The

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duty to take steps in relation to potable networks includes laying pipes to the licensee's treatment works.

291. *New section 66C* sets out the conditions under which an undertaker ('the secondary undertaker') may be required to provide water supplies to licensed water suppliers for the purpose of them supplying water to their customers using the supply system of another undertaker (the primary undertaker) to which the licensee's customers are connected and the conditions under which the primary undertaker may be required to permit the introduction of that water.
292. Subsection (2)(a) places a duty on the secondary undertaker, when requested by a licensed water supplier, to take steps to enable the supply to be made to the licensee and to provide that supply on certain terms agreed between them or determined by the Authority.
293. Subsection (2)(b) places a duty on the primary water undertaker, when requested by a licensed water supplier, to take steps to permit the introduction of the water into its supply system on certain terms agreed, or determined by the Authority. These steps are likely to include, if no appropriate cross-border pipe is already available, laying a pipe to the secondary undertaker's supply system, making the appropriate connections and allowing introduction of the water. The steps also include making a connection to the customer where appropriate.
294. Subsections (4) to (6) set out conditions under which the secondary and primary undertakers may refuse a request by a licensed water supplier to supply water and permit the introduction of that water into the supply system. The duty on both will not apply if either or both of the conditions are satisfied. The duty does not apply if connecting the premises of the licensee's customer would result in a contravention of regulations made under section 74 of the Water Industry Act. This would only affect the primary undertaker's system, but if it does, the secondary undertaker is not under a duty to supply. Neither undertaker will be under a duty if complying with the request would put at risk specified obligations or, in certain circumstances, would require them to incur unreasonable expenditure in carrying out works).
295. Subsection (7) allows either undertaker to recover from the licensee, certain expenses in taking the steps referred to in subsection (2) even where the undertaker was not able to make the supply because it could not obtain necessary authorities and agreements (in the same way as in section 66A(7) and 66B(7)).
296. *New section 66D* determines or provides for the determination of certain matters in relation to the requirements of 66A to 66C.
297. Subsection (1) allows licensed water suppliers to seek a determination from the Authority as to whether a refusal on the part of an undertaker to provide a wholesale supply or permit the introduction of water into its supply system on the grounds of the relevant conditions set out in sections 66A to 66C is justified.
298. Subsection (2) provides that a water undertaker's duties under 66A to 66C shall be performed as agreed between the undertaker (or undertakers in the case of section 66C) and licensed water supplier (subject to the other provisions in section 66D, and sections 66E and 66F) or in the absence of agreement, as determined by the Authority. Where the undertaker and licensed water supplier are unable to come to an agreement, the licensed water supplier may ask the Authority for a determination. In this case, the Authority will determine the terms and conditions to apply, and this will form the contract between the parties.
299. Subsection (3) requires the charges payable by licensed water suppliers under the agreement or determination mentioned above to be fixed in accordance with the costs principle set out in section 66E.

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300. Subsection (4) requires the Authority to issue guidance on the terms and conditions of agreements mentioned above, including the fixing of charges, between undertakers and licensed water suppliers. This guidance will be binding on undertakers and licensed water suppliers.
301. Subsections (7) and (8) allow the Authority to require the parties to modify or terminate agreements which are not made in accordance with the guidance or the costs principle referred to section 66E. This requirement is enforceable against parties using the section 18 machinery.
302. Subsections (9) and (10) prevent the Authority from exercising its Competition Act 1998 powers to modify agreements which are contrary to the Chapter I prohibition in that Act.
303. *New section 66E* sets out the costs principle referred to in section 66D.
304. Subsection (1) set out the basics of the costs principle. Undertakers are to recover from licensed water suppliers two elements of cost to the extent that those sums exceed any financial benefits the undertaker receives as a result of the supplier using the system to supply its customers. First, the direct costs of providing any wholesale supply to a licensed water supplier or permitting the introduction of water into the supply system. Second, an appropriate amount (defined in subsection (3)) of qualifying expenses (defined in subsection (2)) together with a reasonable return.
305. Subsection (2) defines qualifying expenses as all of the expenses that an undertaker incurs (or has incurred) in performing its statutory functions. This definition therefore includes both historical and future costs.
306. Subsections (3) and (4) define the appropriate amount referred to in subsection (1)(b) as the expenses which the undertaker would have ordinarily recovered from its customers if they had not been supplied by a licensed water supplier. However, any costs that the undertaker can reduce or avoid are not included in this amount.
307. It is possible that, as a result of a licensed water supplier supplying its customers, the undertaker receives some financial benefit. To the extent that there are any such benefits, these are deducted from the two elements of cost set out in subsection (1).
308. *Section 66F* provides supplementary provisions to section 66D.
309. Subsections (1) and (2) require the Authority, before making a determination under sections 66D(1) or (2), (either in relation to the satisfaction of conditions or the terms and conditions on which a supply is to take place) to consult the Secretary of State (in the shape of the Drinking Water Inspectorate which exercises drinking water functions on his behalf) where water is being introduced to a supply system (section 66B or section 66C cases) and the Environment Agency where water is being transferred from one area to another (section 66C cases).
310. Subsections (3) and (4) provide which is the appropriate body to consult depending on whether the undertaker is or (in the case of a supply under section 66C) undertakers concerned are located in England or Wales. The Assembly is consulted in relation to supplies made using supply systems of undertakers whose areas are wholly or mainly located in Wales. The Secretary of State is consulted in relation to supplies made using the supply systems of all other undertakers. Both are consulted in a cross border supply case where the two undertakers concerned are not wholly or mainly in the same country (i.e. one is mainly in Wales and the other in England).
311. Subsections (5) to (8) require the Authority to publish its guidance relating to the terms and conditions of agreements referred to in section 66D and to consult such persons as it considers appropriate before it issues or revises such guidance.
312. Subsection (10) provides for any terms and conditions determined by the Authority under section 66D to be treated as if they had been agreed between the parties.

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313. *New section 66G* sets out the requirement for the Authority to designate certain introductions of water by licensees as strategic supplies. These are an introduction of water without which there would be a substantial risk that the undertaker would not be able to maintain supplies to its own customers and make supplies for domestic purposes to licensed water supplier's customers. The significance of this designation is that the licensed supplier will be subject to the special administration procedures in sections 23 to 26 of the Water Industry Act.
314. Subsections (1) to (8) allow the undertaker to request that the Authority determines that an introduction of water constitutes a strategic supply, if it believes it to be such. The Authority may also propose to make such a determination without any such request. The Authority shall inform the Secretary of State, the Assembly, and other such other persons, as it considers appropriate of the request or any proposed determination and shall indicate the time within which representations may be made.
315. *New section 66H* covers the situation where a supplier is making two or more introductions of water which, taken together would amount to a strategic supply (though they would not be strategic if taken separately).
316. *New section 66I* makes it an offence to use an undertaker's system to supply the premises of a customer, unless the supply is made by the water undertaker or a licensed water supplier in pursuance of its licence. The Secretary of State or the Assembly (in relation to systems of undertakers wholly or mainly in Wales), or the Authority, may instigate proceedings and a person found guilty may be fined, and any agreement which is found to contravene this prohibition will be void.
317. Subsections (3) and (8) give the Secretary of State, or the Assembly in relation to systems of undertakers wholly or mainly in Wales, the power to specify circumstances where the prohibition shall not apply. This would be used to except an activity that would otherwise be an offence, and might be used where it was found that the prohibition had unintentionally caught a particular activity.
318. *New section 66J* makes it an offence to introduce water into a water undertaker's supply system, except for the introduction by a licensed water supplier in pursuance of its licence, or by another water undertaker under an agreement for a bulk supply. Proceedings in respect of such an offence may be instigated by the Secretary of State, the Assembly in relation to supply systems of undertakers wholly or mainly in Wales or the Authority and a person found guilty on conviction or indictment may be imprisoned for up to two years, or fined (on summary conviction this may be up to £20,000). Any agreement found to contravene this prohibition will be void. As for section 66I, the Secretary of State, and the Assembly (in relation to supply systems of undertakers whose areas are wholly or mainly in Wales), has the power to specify further circumstances where the prohibition shall not apply.
319. *New section 66K* provides for the Secretary of State, by statutory instrument following the negative procedure, or the Assembly in relation to supply systems of undertakers wholly or mainly in Wales (under new section 66L(7) and (8)), to grant exemptions to sections 66I and 66J above. The activities will continue to be prohibited generally, but a person or class of person is exempted, perhaps subject to conditions. This might be used in a case in which a person is carrying out one or more of the activities for which a licence would normally be required but where licensing would be unnecessarily onerous, or where a person was found to have been unintentionally caught by the legislation.
320. Subsections (1) to (5) provide for the Secretary of State or the Assembly to consult on an order granting exemptions to individuals or to classes of people, setting out the reasons for the order and terms proposed, and allowing not less than 28 days for representations. An exemption for a particular person must be notified by the serving of a copy on that person, as well as more widely publishing it; exemptions for classes of people must

*These notes refer to the Water Act 2003 (c.37)
which received Royal Assent on 20th November 2003*

be published to bring it to the attention of persons of that class as well as others who might be affected.

321. An exemption may be granted for a specific period or indefinitely, and it can include conditions which allow the Secretary of State, the Assembly, or the Authority to require any exempted person to comply with particular directions or gain consents or determinations from those bodies.
322. *New section 66L* allows the Secretary of State, by order made by statutory instrument following the negative procedure or the Assembly (in relation to systems of undertakers wholly or mainly in Wales) to vary an order which granted an exemption, or terminate any exemptions, on request of the person to whom it applied (in the case of withdrawing an exemption granted to a person, or in the case of withdrawing an exemption granted to persons of a class, from any person of that class) in accordance with a provision in the order, or if it appears to him or it inappropriate to continue on the current terms.
323. The Secretary of State or the Assembly must consult the Authority and give notice of its proposals, with a period for representations, by, as appropriate, serving a copy of the notice on the person to whom the exemption was granted, or bringing it to the attention of those in the class of persons exempted, or that person within the class to whom the proposed order applies.
324. [Paragraph 4](#) of the Schedule allows the Authority to modify the conditions of appointment of a water undertaker where it considers it necessary or expedient in consequence of the amendments to the Water Industry Act made by this Schedule and Schedule 8. The Authority may also make incidental or consequential modifications of other conditions of appointments which it believes necessary.
325. Before making such modifications the Authority has to consult the company holding the appointment and anyone else it considers appropriate. The Secretary of State can give directions to the Authority in order to ensure that the conditions of appointment are modified in consequence of the amendments made to the Water Industry Act.
326. The powers of the Authority to make such modifications are time limited to a period of two years beginning with the first day of commencement of all of Schedule 4 and Schedule 8.