

WATER ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Miscellaneous

Section 57 The Drinking Water Inspectorate 327.

Section 57: The Chief Inspector of Drinking Water and the Drinking Water Inspectorate.

This section amends section 86 of the WIA which enables the Secretary of State to appoint persons to act as what are currently described as “technical assessors” for the enforcement of water quality. The amendments reflect the fact that such assessors are more generally known as the Drinking Water Inspectorate.

328. Subsection (3) enables the Secretary of State to designate one inspector as the Chief Inspector of Drinking Water; for the Assembly to designate a Chief Inspector of Drinking Water for Wales if the relevant functions are transferred to the Assembly (by virtue of the Transfer of Functions Order); and, where the same person is designated to act in both capacities, for that person to be known as the Chief Inspector of Drinking Water.
329. Subsection (7) increases from £5,000 to £20,000 the maximum penalty available in the magistrates’ court for the offence of failing to provide inspectors with assistance or information, and enables cases to be brought on indictment before the Crown Court, where the offence is punishable by a fine.
330. Subsection (8) enables the Chief Inspector of Drinking Water to institute prosecutions, in relation to drinking water quality, in his or her own name, and this also applies to the Chief Inspector of Drinking Water for Wales.

Section 58 Water fluoridation 331.

Section 58: Fluoridation of water supplies.

The current provisions within section 87 to 91 of WIA allow health authorities to request water undertakers to fluoridate water supplies but place no duty on water undertakers to accede to such requests. This section replaces sections 87 and 89 to 91 of the WIA (fluoridation of water supplies at the request of health authorities). These provide for fluoridation of water supplies where Strategic Health Authorities (in relation to England) and the Assembly (in relation to Wales) make arrangements with undertakers.

332. New section 87 puts water undertakers under a new statutory obligation to accede to requests from Strategic Health Authorities (in relation to England) and the Assembly (in relation to Wales) to enter into arrangements to fluoridate water supplies. Water

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

undertakers are not required to enter into arrangements unless an indemnity under new section 90 has been given.

333. New subsection 87(7) provides that the relevant authority shall consult with the Water Services Regulation Authority in relation to the terms to be included in the agreement, particularly those which affect the operation of the water undertaker's supply system. New subsection (8) requires that where, for example, a water distribution system overlaps the boundaries of two adjoining SHAs, they co-operate in making arrangements to fluoridate with a water undertaker.
334. New section 87A(1) restates that the concentration of fluoride in the water supply shall be maintained at a target concentration of one milligram per litre. New subsections (2) to (5) provide for SHAs or the Assembly to make arrangements for a lower concentration where it is not technically practical to achieve one milligram per litre.
335. New section 87B introduces provision for determination of terms, where the relevant authority and a water undertaker fail to agree the terms of an arrangement to fluoridate.
336. New section 87C(2) restates the two chemical compounds which are permitted to be used in fluoridating water supplies. Subsections (3) and (4) allow water companies to supply fluoridated water in areas not covered by arrangements under section 87 where it is necessary to do so due to operational constraints, such as dealing with serious deficiency in supply.
337. New section 88A introduces new regulation making powers for the Secretary of State (and the National Assembly for Wales) to reduce the target concentration of fluoride to below one milligram per litre. This might be appropriate if, for example, it was found that as a result of increased use of discretionary fluorides like toothpaste, the desired reductions in tooth decay could be achieved at lower concentrations of fluoride in the water supply. Reductions may apply nationally or to a particular region.
338. New section 89 provides for consultations. It introduces new regulation making powers for the Secretary of State (and the National Assembly for Wales) to make regulations on the consultation process which relevant authorities will have to follow before requesting water undertakers to enter into arrangements or varying or terminating them.
339. New section 90 provides for the Secretary of State (with the consent of the Treasury) and the National Assembly for Wales, to indemnify water undertakers and licensed water suppliers in respect of liabilities which they may incur in complying with the arrangements for fluoridation and introduces a new regulation making power enabling the Secretary of State (and the National Assembly for Wales) to make provision in relation to the matters in respect of which an indemnity may be given and the forms and terms of such indemnity.
340. New subsection 90A requires SHAs with fluoridation schemes to monitor their effects on the health of their populations and publish reports on their findings at four yearly intervals.
341. New section 91 (1)-(6) provides for the existing pre-1985 fluoridation schemes to be treated as if they been established under the amended Act except that the consultations required on proposals for new fluoridation schemes do not apply to them. Subsection (9) repeals the provisions of section 91 of the WIA and Schedule 7 to the WIA that related to pre-1985 fluoridation schemes. Subsection (10) is a consequential provision providing for amendments to the WIA to be reflected in the Water Fluoridation Act 1985 which is still in force in Scotland. (The Scottish Parliament would be responsible for any wider changes to the legislation governing fluoridation in Scotland). Subsections (11) to (14) provide that certain outstanding applications made by health authorities to water companies to fluoridate their water be treated as requests under new section 87(1) of the WIA.

Section 59 Water resale
342.

Section 59: Charges for services provided with the help of an undertaker

This section gives the Authority the power to offer greater financial protection to persons paying for water or sewerage services provided with the help of (but not by) a water or sewerage undertaker. This brings the protection that may be offered to these customers closer into line with that offered to customers in the case of the resale of gas and electricity.

343. The Director has existing powers to make an order fixing maximum charges for water resale in section 150 of the Water Industry Act 1991. The section adds further powers:

- to order that interest be recoverable on any excess charge that is to be repaid and, if he exercises this power, to specify or describe the rate of interest;
- to require any person providing water supplies or sewerage services with the help of an undertaker to provide specified or described information to the person who pays the charges; and
- to specify a maximum price or to specify an amount or percentage reduction in the maximum price to apply in the event of failure to give information as required by an order.

344. Provisions in this section are devolved to the Assembly.

Sections 60 to 61 Penalties
345.

Section 60: Abstraction and impounding offences.

This section amends sections 24(5)(a) and 25(3)(a) of the WRA so that the maximum penalty available to a magistrate's court for offences of abstracting or impounding water without a licence where one is needed, or doing so in contravention of a licence condition, is increased from £5,000 to £20,000. Proceedings can also be brought in the Crown Court, where the penalty on conviction would be an unlimited fine.

346. Provisions in this section are devolved to the Assembly.

347.

Section 61: Supplying water unfit for human consumption.

This section increases from £5,000 to £20,000 the maximum penalty available to a magistrates' court for the offence created under section 70(1) of the WIA where a water undertaker supplies "water by means of pipes to any premises and that water is unfit for human consumption". Proceedings can also be brought in the Crown Court, where the penalty on conviction would be an unlimited fine. This offence is also extended to other persons under paragraph 20 of Schedule 8 to the Act.

348. Provisions in this section are devolved to the Assembly.

Section 62 Water resources management plans
349.

Section 62: Water resources management plans.

This section places water undertakers under a duty to produce water resources management plans and to publish and consult upon those plans. The duty requires that undertakers plan for demand in the medium and long term and for how to meet that demand. Water resource management plans will be subject to annual review and have to

be revised every five years, or in any case where the annual review indicates a material change in circumstances or the Secretary of State directs that a revised draft should be prepared. There are powers for the Secretary of State (or the Assembly) to prescribe in a direction the matters that plans must address and the form that they are to take. Licensees (i.e. new entrants to the competitive regime for the supply of water) have to provide information required by undertakers to prepare their plans. The section also sets out the procedures for publication and consultation that must be followed in the production of these plans.

350. Provisions in this section are devolved to the Assembly.

Sections 63 to 65 Drought

351. Provisions in sections 63 to 65 are devolved to the Assembly.

352.

Section 63: Drought plans.

Water undertakers are required to prepare, maintain and publish drought plans. A drought plan should set out how the undertaker will continue to meet its duties to supply adequate quantities of wholesome water during drought periods with as little recourse as possible to drought orders or drought permits. Drought plans must be revised every three years or if there is a material change in circumstances or the Secretary of State otherwise so directs. Licensees have to provide information required by undertakers to prepare their plans. The procedures for publication and consultation are the same as those for water resources management plans.

353.

Section 64: Drought orders and drought permits: charges.

Current legislation allows a water company to apply to the EA for a drought permit where, by reason of an exceptional shortage of rain, a serious deficiency of water supplies exists. Similar powers enable an application to be made to the Secretary of State/National Assembly for a drought order. A drought order or permit allows a water company to meet that deficiency by allowing it to abstract more water from existing and additional sources. This section enables the Agency to recover from a water company any expenses it incurs in connection with any application by that company for a drought order or permit, including those relating to any local inquiry that is held, and in connection with any such order or permit if it is subsequently issued. This may include, for example, costs of additional environmental monitoring to establish the effects of the permit or order. The section also repeals sections 77(4) and 79A(8) of the WRA to make it clear that sections 125 to 129 do not apply to these charges.

354.

Section 65: Procedure at local inquiries.

Where there has been an exceptional shortage of rain causing a serious deficiency in water supplies then, under present arrangements, any water company or the EA can apply to the Secretary of State for a drought order. The Secretary of State may direct that a public inquiry be held into such an application.

355. The Local Government Act 1972 sets certain rules about the attendance of witnesses and the awarding of costs for inquiries. This section applies those rules in respect of the conduct of inquiries into drought orders.

Sections 66 to 69 Land drainage and flood defence

356.

Section 66: Revocation of local flood defence schemes.

This inserts a new section 18A into the Environment Act 1995 (which extends to the whole of Great Britain) to enable the Minister, by order made by statutory instrument, to revoke any local flood defence scheme and make provision for supplementary purposes. These include altering the number of members of the regional flood defence committee in whose area the local flood defence scheme was situated, and adjusting the members appointed by constituent councils to the regional committee.

357. Provisions in this section are devolved to the Assembly.

358.

Section 67: Membership of regional flood defence committees in Wales.

This section inserts new sections 16A and 16B into the Environment Act 1995. New section 16A enables the National Assembly for Wales, by order made by statutory instrument, to make provision determining the total number of members, and the method of selection and appointment of the chairman and other members of Welsh regional flood defence committees, and to make provision for such supplementary purposes as the National Assembly for Wales considers appropriate. Where a Welsh Committee is not wholly in Wales then this power may only be exercised with the agreement of the Secretary of State. New section 16B disapplies the provisions of sections 15, 16 and 18A(3) of the Environment Act 1995 (which make provision as to the membership of regional flood defence committees) where an order under section 16A is in force. It also ensures, by modifying section 18 and Schedule 5 of the Act, that the composition of local and regional committees is not incompatible in such circumstances.

359.

Section 68: Regional flood defence communities.

This section amends paragraph 1 of Schedule 4 to the Environment Act 1995 to enable the relevant Minister to make orders which establish a new regional flood defence committee for such area as may be specified in the order, or to abolish a regional flood defence committee.

360. Taken together, sections 66 and 68 enable Ministers to abolish some or all of the present local flood defence committees in order to establish a single tier of regional flood defence committee in that region. Orders abolishing the local committees may adjust the membership of the “parent” regional flood defence committee. They also provide powers to create new and additional regional committees and abolish existing regional committees. Paragraphs 2 to 6 of Schedule 4 to the 1995 Act set out the procedures for making orders under that Schedule, including those under the extended paragraph 1. These procedures are also being applied to orders under the new section 18A.

361. Provisions in this section are devolved to the Assembly, and the power to establish or abolish a regional flood defence committee, part but not all of which is in Wales, is exercisable by the Secretary of State and the Assembly acting jointly.

362.

Section 69: Grants for drainage works and flood warning systems.

Ministers currently make grants to the EA for drainage (which includes flood defence) and flood warning purposes under sections 147-149 of the WRA 1991. Those powers require each project to be approved individually; it is not open to Ministers to make block grants to the Agency for these purposes. A general power for Ministers to make grants to the Agency exists under section 47 of the Environment Act 1995 but the existence of the specific powers in sections 147-149 of the 1991 Act may give rise to uncertainty as to whether the general power is intended to be capable of being used to make block grants to the Agency for drainage or flood warning purposes. This section therefore repeals sections 147-149 so as to remove any doubt that drainage and flood

warning grants to the Agency may be paid under section 47 of 1995 Act (with the agreement of the Treasury). The section makes consequential amendments to sections 165(4), 166(4) and 221(1) of the WRA which refer to the repealed provisions. The Land Drainage (Grants) Regulations 1967 will automatically lapse with the repeal of these sections.

363. Provisions in this section are devolved to the Assembly.

Section 70 Information

364.

Section 70: Information.

This section amends the WRA to strengthen the Agency's powers to require information about abstractions, impounding and any related matters, in support of its water resource management functions. For abstractions or applications to abstract, or the transfer or apportionment of a licence, this includes information on the abstraction and the use of the water to be abstracted. For impounding or applications to impound, this includes the impoundment and the way in which it is operated. This will bring the existing powers to require information with respect to any abstraction in line with existing powers to seek information in connection with the control of pollution. The penalty for non-compliance is increased.

365. Provisions in this section are devolved to the Assembly.

Section 71 Powers of entry

366.

Section 71: Extension of Environment Agency's powers of entry.

Existing legislation provides the EA with powers of entry to premises to carry out inspections to confirm that all legislative requirements are being complied with. These powers are wider in respect of the Agency's water pollution functions, where they allow the installation of monitoring and other apparatus and the carrying out of experimental borings or other works. This section extends these wider powers to all of the Agency's functions.

367. Provisions in this section are devolved to the Assembly.

Section 72 Environment Agency's general water resources duty

368.

Section 72: Efficient use of water resources.

Under the provisions of the Environment Act 1995 the Environment Agency has a general duty to secure the proper use of water resources in England and Wales. This section makes it clear that this includes a duty to secure the efficient use of those water resources.

369. Provisions in this section are devolved to the Assembly.

Section 73 Border rivers

370.

Section 73: Border rivers.

The Agency's abstraction and impoundment regulatory controls do not apply to certain rivers and their tributaries on the border between England and Scotland. The waters concerned include the River Tweed, which because of its definition includes the River Till situated largely in England, and the Rivers Esk and Sark and certain of their

tributaries. The section amends the WRA to apply these controls in the English parts of those river catchments.

Sections 74 to 80 Reservoirs

371. These sections amend the Reservoirs Act 1975. The provisions of the Reservoirs Act 1975 are devolved to the Assembly, except the new section 12A(4) introduced by section 77 of this Act, which deals with public safety for England.

372.

Section 74: Environment Agency to be enforcement authority under the Reservoirs Act 1975.

Enforcement within England and Wales of the provisions of the Reservoirs Act 1975 (which covers the whole of Great Britain) currently falls to some 140 local authorities. This section transfers enforcement functions in relation to England and Wales to a single body, the EA.

373.

Section 75: Extension of enforcement authority's reserve powers.

Enforcement authorities have reserve powers that may be used in certain circumstances where reservoir undertakers have failed to comply with their responsibilities under the 1975 Act. For example, these powers may be used where, having failed to comply with a notice served by the authority, the undertaker refuses to implement recommendations made by a panel engineer in the interests of safety. This section enables the enforcement authority to step in and arrange for the works to be executed and to charge the costs of doing so to the undertaker. The reserve powers are not presently available in respect of reservoirs that are under construction or being enlarged and this section extends the power to encompass such cases. This section applies in England and Wales.

374.

Section 76: Service of documents.

The amendments made by this section are consequential on provisions made by section 71.

375.

Section 77: Flood plans: large raised reservoirs.

The Reservoirs Act 1975 makes provision in respect of escapes of water from large raised reservoirs. The emphasis of the current legislation is on prevention of escapes. But with uncertainties over the future implications of climate change and rainfall patterns further flexibility within this safety legislation, in the Government's view, should be available. Some reservoir owners already prepare flood plans voluntarily. This section enables the Secretary of State, after consultation with all interested parties, to issue a direction to the owner of a large raised reservoir in England or Wales requiring the preparation and dissemination of such a plan. Under section 77(4), the Secretary of State may also issue directions to reservoir undertakers in Wales where the Assembly has not itself done so but where it is considered necessary in the interests of public safety in England.

376.

Section 78-79: National security and offences.

This section provides for the exclusion from the registers, maintained under section 2 of the 1975 Act of information that is prejudicial to the interests of national security. It also imposes restrictions on consultation and publication arrangements in section 77 where the Secretary of State (or Assembly) considers it necessary to do so in the interests of national security. The restrictions on publication may extend to flood plans other than

those prepared under section 77 and restrictions may also limit access to any flood plans. Failure by an undertaker to comply with a notice issued under this section will be a criminal offence (under section 79).

377.

Section 80: Crown application.

Although exempt from the provisions of the 1975 Act, Crown bodies have acted as though bound by the Act. This section formally extends the Act to the Crown in England and Wales.

Sections 81 to 83 Water conservation

378. Provisions in sections 81 to 83 are devolved to the Assembly.

379.

Section 81: Duty to encourage water conservation.

This section places a new duty on the Secretary of State to take appropriate steps to encourage water conservation and report to Parliament on progress every three years. This new duty will give statutory effect to a number of existing discretionary measures and encourage new initiatives to further water conservation. A similar duty will apply to the National Assembly of Wales.

380.

Section 82: Water conservation: requirements on relevant undertakers.

This section amends the WIA, adding to water undertakers' general environmental duties in relation to their functions the duty to further water conservation. The new duty applies when undertakers formulate or consider any proposals relating to any of their functions.

381.

Section 83: Water conservation by public authorities.

This section requires all public authorities, as defined in the section, to take into account, where relevant, the desirability of conserving water supplied to premises. This applies to both their actual use of water and where their functions might have an impact on water use. This is not intended to restrict justifiable water use, but to ensure consideration of water conservation in the development of policies and activities.

Section 84 Fire hydrants

382.

Section 84: Fire hydrants.

This section amends section 57 of the WIA. Subsection (1) adds a new subsection 4A to section 57 of the 1991 Act and makes water companies (rather than Fire Authorities) liable for the cost of replacing fire hydrants that they remove when renewing or renovating water mains.

383. *Subsection (2)* adds a new subsection 4A to section 58 of the 1991 Act and makes water companies (rather than the owners of businesses or factories) liable for the cost of replacing fire hydrants that they remove when renewing or renovating water mains.

384. Provisions under this section are devolved to the Assembly.

Section 85: Coal mine water pollution

385.

Section 85: Control of water from coal mines.

This section amends the Coal Industry Act 1994 in respect of England and Wales. Preventing and cleaning-up coal mine water pollution from abandoned mines is a major environmental activity for the Coal Authority which has been running for a number of years. The programme has been run on a non-statutory basis and receives funding from the DTI.

386. In view of the increasing expenditure on this programme it is, in the Government's view, important that the programme should be put on a statutory basis.
387. **Section 85** therefore provides the Coal Authority with statutory powers to prevent and control water emanating onto land or into any controlled waters from abandoned coal mines which are vested in it. In this respect, controlled waters means any rivers, estuaries, coastal waters or groundwaters.
388. In addition to the powers to prevent or control water emanating from abandoned coal mines, this section gives the Coal Authority powers to enter land to drill boreholes and install monitoring and other equipment. This will allow the Coal Authority to investigate and deal with any polluting water from coal mines that poses a serious threat to the environment or human health. Powers are also provided for the Coal Authority to compulsorily buy land to prevent or treat water pollution from abandoned coal mines.
389. These statutory powers build upon the existing provisions of the Coal Authority's founding legislation, the Coal Industry Act 1994. As the Authority's minewater programme already exists, the work of the Environment Agency, which operates under pollution control powers in the WRA, is unaffected by this change.
390. While the Coal Authority's powers are similar to those of the EA they work independently. Notwithstanding, a memorandum of understanding exists between the two organisations which sets out the mechanics of tackling coal minewater discharges and ensures that the EA is kept fully informed of the Coal Authority's activities.

Section 86 Contaminated land
391.

Section 86: Contaminated land: pollution of controlled waters.

A regime for identifying and dealing with land contamination causing unacceptable risks to human health and the environment was introduced in England in 2000 (in Wales, 2001). Local authorities are under a duty to identify such land and secure its remediation, subject to detailed rules. This includes land in such a condition that pollution of controlled waters is being caused. It became clear that this could include some very minor cases, resulting in an inconsistent approach as between land and water in relation to the degree of risk being addressed by the regime.

392. To resolve this difficulty, this section amends the second limb of the definition of "contaminated land" in Section 78A of the Environmental Protection Act 1990 so that it applies only where significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused. It also provides powers for the Secretary of State to issue guidance on the amended definition and alters the position of "ground waters" in relation to the term "pollution of controlled waters".
393. Provisions under this section are devolved to the Assembly.

Section 87 Discharge consents
394.

Section 87: Transfer of discharge consents.

It is an offence under the WRA to discharge sewage or trade effluent into controlled waters (i.e. rivers, estuarial, coastal or groundwaters) without permission from the EA.

395. Anyone wishing to discharge effluent into controlled waters in England and Wales must therefore first make an application to the EA. The EA carries out a statutory application process which involves public newspaper advertising and consultation before it considers whether or not to approve an application.
396. If the EA decides to approve an application it may issue a discharge consent which sets out the terms of the discharge. In addition, each discharge consent will contain a number of specific conditions which the consent holder must meet. Failure to meet the terms of the consent or any of the conditions is a breach of consent and could lead to enforcement action by the EA.
397. The legislation includes provisions which allow the transfer of a discharge consent to another person who proposes to carry on the discharge in place of the existing holder. This is to cover situations where, for example, ownership of a factory may have changed hands, but the manufacturing process remains the same, as does the nature of the discharge.
498. The EA has encountered some difficulties in registering these transfers due to the lack of a statutory procedure.
399. This section amends paragraph 11 of Schedule 10 to the WRA and provides for a joint notice procedure, including any prescribed information and that if notice is duly given, the Agency shall effect the transfer.
400. [Schedule 10](#) to the WRA also contains provisions which set out the position on the transfer of a consent where death of the consent holder occurs, or where the consent holder becomes insolvent or bankrupt and action is taken against them. In its present form, paragraph 11 of Schedule 10 provides that consents cannot be disclaimed. This section serves no useful purpose since the Agency already has appropriate powers to deal with any problems that might arise either as a breach of conditions or if an illegal discharge is made. This section therefore also repeals paragraph 11(4) of Schedule 10.
401. Provisions under this section are devolved to the Assembly.

Sections 88 to 89 Trade effluent consents

402. Provisions in sections 88 to 89 are devolved to the Assembly.
- 403.

Sections 88 and 89: Trade effluent consents.

The discharge of trade effluent into public sewers is regulated under the WIA. An occupier of trade premises requires a trade effluent consent before he may discharge trade effluent into the public sewer. He must therefore apply to his sewerage undertaker (water and sewerage company) who will consider the application and issue a trade effluent consent if they are content to do so. Trade effluent consents specify what may be discharged to sewer and contain conditions which the discharger must meet to comply with his consent.

404. From time to time confusion arises as to whether discharges arising from particular types of activity are required to be regulated under the trade effluent consenting regime. Often these discharges are small in volume, but a large quantity of such discharges could potentially be harmful to the environment. Sometimes it has proved difficult for sewerage undertakers to decide whether a discharge constitutes “trade effluent” and this has led to inconsistency within the consenting regime.

405. Where this has occurred in the past, the problem has been overcome by amending the primary legislation in order to make it clear that effluent emanating from a specified trade required a trade effluent consent. However, this process whilst dealing with the immediate problem has not proved to be a satisfactory long term answer to this problem and remains a somewhat inflexible approach to take.
406. A power is provided to the Secretary of State to make it clear by statutory instrument whether discharges of any given liquid or matter (whether or not constituting trade effluent) to the public sewer are or are not required to be carried on in accordance with the conditions of a trade effluent consent.
407. The Secretary of State has the power (in effect) to modify the meaning of 'trade effluent' and 'trade premises' for the purposes of the trade effluent consenting regime in the WIA. By using this power, the Secretary of State will be able to narrow or widen the scope of these expressions and in turn, make it clear whether discharges from particular processes, substances or types of activity to the public sewer are subject to the consenting regime.
408. The overall effect of these sections is intended to result in better regulation of the trade effluent discharge process by bringing under control the discharge of small volumes of potentially harmful substances to the water environment.

Sections 90 to 92 Water mains, etc

409. Sections 90 and 91 amend sections 42 – 44 of the WIA to enable the requisitioned costs of a water main to be paid by a single payment. The existing method of paying over 12 years is retained as an alternative (at the election of the person requisitioning the main).
410. Provisions in sections 90 to 92 are devolved to the Assembly.
- 411.

Section 90: Water main requisitions: financial conditions.

This section amends section 42 of the WIA (financial conditions of compliance with water mains requisition) to enable the relevant deficit to be paid by a single payment. It also allows for disputes about requisition payments to be determined by the Authority.

412.

Section 91: Water main requisitions: calculations of payments.

This section amends section 43 of the WIA (calculation of relevant deficit for the purpose of section 42) and is a consequence of the self lay provisions of water mains in section 92. It also provides a new section 43A which sets out how the discounted aggregate deficit will be calculated. This deficit is the estimated charge by customers over the following 12 years which are taken into account when calculating the single payment. It also makes minor amendments to section 44 of the WIA (determination of completion date and route for requisitioned main).

413.

Section 92: Self-lay and adoption of water mains and service pipes.

This section provides five new sections 51A to 51E. New Section 51A sets out the steps and agreement that must be entered into by a developer or self lay organization proposing to construct domestic water mains or service pipes which are to be vested in the water undertaker. It provides that the main must be built in accordance with the agreement with the water undertaker to enable it to be adopted on completion. The provisions do not prevent agreements being entered into in relation to declarations of vesting for pipes used for non-domestic supplies.

414. New Section 51B sets out the situations where appeals can be made to the Authority if the undertaker refuses to enter into an adoption agreement on reasonable terms.

415. New section 51C provides that the person who enters into the adoption agreement relating to a water main shall pay the undertaker's reasonable costs of incorporating the water main within its existing water mains network. It also provides for an offset payment to be made by the undertaker to the developer or self lay organisation equivalent to the discounted estimated sum of water charges for the first twelve years in respect of premises expected to be connected to the new main.
416. New section 51D provides that if anyone other than a water undertaker builds a water main or service pipe which will be used for supplying water for domestic or food production purposes, the pipe must not be connected unless it vests in the undertaker.
417. New section 51E is supplementary to sections 51A to 51D and Subsections (2) to (7) make minor amendments to sections 45, 47, 179, 198 and 219 of the WIA.

Sections 93 to 99 Sewers and drains

418. Provisions in 93 to 99 are devolved to the Assembly.
419.

Section 93: Requisition and adoption of sewers.

This section amends section 99 of the WIA to allow the offset payment to be made as a single sum as an alternative to paying over 12 years. It also provides a new section 100A which sets out how the single sum should be calculated.

420.

Section 94: Provision of public sewers otherwise than by requisition.

Section 101A of the WIA imposes a duty on sewerage undertakers to provide a public sewer in certain circumstances to properties where the existing non-mains drainage arrangements is causing environmental or amenity problems. This was limited to buildings built before 20th June 1995. This section removes that cut-off date.

421. **Sections 95 to 99** make provisions in relation to lateral drains. A lateral drain is that part of a drain which runs from the curtilage of the premises to the sewer. The provisions include for lateral drains to be requisitioned from the sewerage undertaker. Also, if they are to be constructed by someone else for adoption by the undertaker, an agreement should be entered into with the undertaker to ensure they are built to adoptable standards. They also provide for an inspection chamber to be constructed close to the curtilage of the property to define the demarcation between the lateral and the house drain. The chamber will also have to be constructed to the required standard for adoption by the sewerage undertaker.

422.

Section 95: Requisition of lateral drains.

This section amends section 98 of the WIA (duty to comply with sewer requisition) to enable lateral drains to also be requisitioned from the sewerage undertaker.

423.

Section 96: Adoption of lateral drains.

This section amends s104 of the WIA to enable lateral drains to be adopted by the sewerage undertaker if they have been constructed in accordance with an agreement with the undertaker. It also makes provision for an inspection chamber to be installed in the lateral drain at or near the point of connection between the lateral drain and the house drain at the curtilage of the property.

424.

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

Section 97: Requisitioning and adoption of lateral drains: supplementary.

This section amends other relevant sections of the WIA and includes a definition of lateral drains.

425.

Section 98: Schemes for the adoption of sewers, lateral drains and sewage disposal works.

This section provides for the Secretary of State to make regulations to place a duty on sewerage undertakers to exercise their existing powers, under Section 102 of the Water Industry Act 1991, to adopt private sewers under defined circumstances where certain criteria are satisfied. The circumstances and criteria will be set out in schemes made under the regulations.

426.

Section 99: Communications with public sewers.

This section makes consequential amendments to section 106 of the WIA (right to communicate with public sewers) and in particular to subsection 4 to enable a request to communicate a lateral drain with the sewer to be refused if the standard of construction of the lateral is unreasonable.