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## SCHEDULES

### SCHEDULE 4

Section 56

#### LICENSING OF WATER SUPPLIERS

1 The WIA is amended as follows.

##### Commencement Information

- I1** Sch. 4 para. 1 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(1)(ii), Sch. 1 (with Sch. 3 para. 7)
- I2** Sch. 4 para. 1 in force at 1.8.2005 for specified purposes by S.I. 2005/968, art. 3(b)(ii)
- I3** Sch. 4 para. 1 in force at 1.10.2005 for specified purposes by S.I. 2005/2714, art. 2(h)(ii) (with Sch. para. 8)
- I4** Sch. 4 para. 1 in force at 1.12.2005 in so far as not already in force by S.I. 2005/2714, art. 3(a) (with Sch. para. 8)

2 After Chapter 1 of Part 2 of the WIA there is inserted—

#### “CHAPTER 1A

#### LICENSING OF WATER SUPPLIERS

##### *Granting of licences*

##### **Licensing of water suppliers**

17A(1) Subject to the following provisions of this Chapter—

- (a) the Secretary of State; or
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State (after consulting the Assembly), the Authority,

may grant to a company a licence (a “water supply licence”) giving it the retail authorisation referred to in subsection (2) below, or both that and the supplementary authorisation referred to in subsection (5) below.

- (2) The retail authorisation is an authorisation to the company to use a water undertaker’s supply system for the purpose of supplying water to the premises of customers of the company (subject to subsection (3) below) in accordance with Chapter 2A of Part 3 of this Act.
- (3) The following requirements must be satisfied in relation to each of the premises supplied by the company—
  - (a) the requirement that the premises are not household premises (as defined in section 17C below);

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- (b) the threshold requirement (construed in accordance with section 17D below); and
  - (c) the requirement that the premises are not being supplied with water by another company pursuant to a water supply licence,
- and those requirements shall be enforceable under section 18 below by the Authority.
- (4) A water supply licence which gives a company only the retail authorisation is referred to in this Chapter as a “retail licence”.
  - (5) The supplementary authorisation is an authorisation to the company to introduce water into a water undertaker’s supply system, by means of which any particular supply of water in accordance with the retail authorisation is to take place, in connection with that supply and in accordance with Chapter 2A of Part 3 of this Act.
  - (6) A water supply licence which gives a company also the supplementary authorisation is referred to in this Chapter as a “combined licence”.
  - (7) Before granting a combined licence—
    - (a) the Secretary of State shall consult the Assembly; and
    - (b) the Authority shall consult the Secretary of State and the Assembly.
  - (8) A water supply licence shall not be granted to a company unless—
    - (a) it is a limited company; and
    - (b) it is not a relevant undertaker.
  - (9) The Authority may, with the approval of the Secretary of State, issue guidance as to the factors which are, or are not, to be taken into account in determining the extent of any premises for the purposes of subsection (3) above.
  - (10) Before giving his approval to any guidance issued under subsection (9) above, the Secretary of State shall consult the Assembly.

### **Section 17A: supplementary**

- 17B (1) The Authority shall publish guidance issued under section 17A(9) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (2) The Authority may, with the approval of the Secretary of State, revise the guidance so issued.
- (3) Before giving his approval to guidance revised under subsection (2) above, the Secretary of State shall consult the Assembly.
- (4) Subsection (1) above applies to guidance revised under subsection (2) above as it applies to guidance issued under section 17A(9) above.
- (5) In this Chapter, references to the supply system of a water undertaker are to the system comprising the following—
  - (a) any water mains and other pipes which it is the water undertaker’s duty to develop and maintain by virtue of section 37 below and

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- which are used for the purpose of conveying water from the undertaker's treatment works to the premises of customers; and
- (b) any water mains and other pipes which—
- (i) are used by the undertaker for the purpose of conveying non-domestic water from any of its sources to the premises of customers; and
  - (ii) are not connected to any water mains or pipes falling within paragraph (a) above or to any water mains or other pipes connected to the treatment works mentioned in that paragraph (whether directly or indirectly),
- and in sub-paragraph (i) above the reference to non-domestic water is to water supplied other than for domestic or food production purposes.
- (6) In subsection (5)(a) above, the reference to treatment works is a reference to the works designated from time to time by the Secretary of State as treatment works for the purposes of this subsection.
- (7) Before designating any works for the purposes of subsection (6) above, the Secretary of State shall consult the Assembly.
- (8) A list of any works designated for the purposes of subsection (6) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.
- (9) References in this Act to a licensed water supplier are references to a company which is the holder for the time being of a water supply licence.

### **Meaning of household premises**

- 17C (1) For the purposes of section 17A(3)(a) above, "household premises" means premises in which, or in any part of which, a person has his home.
- (2) The fact that a person has his home in, or in part of, any premises does not mean that the premises are household premises unless the principal use of the premises is as a home.
- (3) The Secretary of State may by regulations make provision as to—
- (a) the circumstances in which a person is or is not to be treated as having his home in, or in part of, any premises for the purposes of this section; and
  - (b) the factors which are, or are not, to be taken into account in determining the principal use of any premises for those purposes.
- (4) The power to make regulations under subsection (3) above is exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.

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### **The threshold requirement**

- 17D(1) This section applies for the purpose of construing the reference to the threshold requirement in section 17A(3)(b) above in relation to the supply of water to any premises.
- (2) The requirement is that, at the time when the licensed water supplier first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually pursuant to the undertaking is not less than 50 megalitres.
- (3) Any estimate of the quantity of water to be supplied to any premises for the purposes of subsection (2) above shall be made in accordance with guidance issued by the Authority with the approval of the Secretary of State.
- (4) Any guidance issued under subsection (3) above may, in particular—
- (a) specify—
    - (i) the factors to be, and not to be, taken into account;
    - (ii) the assumptions to be made; and
    - (iii) the method of calculation to be employed, in making estimates; and
  - (b) make provision as to the commencement of the annual periods by reference to which estimates are to be made.
- (5) Before giving his approval to any guidance issued under that subsection, the Secretary of State shall consult the Assembly.
- (6) Subsections (1) to (4) of section 17B above apply to guidance issued under subsection (3) above as they apply to guidance issued under section 17A(9) above.
- (7) The Secretary of State may make provision by regulations as to the circumstances in which a licensed water supplier is not, for the purposes of subsection (2) above, to be treated as entering into an undertaking with a new customer to give a supply of water to any premises (subject to subsection (12) below).
- (8) The Secretary of State may by regulations amend subsection (2) above by substituting, for the quantity of water for the time being specified there, a different quantity of water (subject to subsection (12) below).
- (9) Regulations under subsection (8) above—
- (a) shall include provision for the amendment made by the regulations not to apply in relation to any undertaking entered into before the date on which the regulations come into force; and
  - (b) may include provision for that amendment not to apply in relation to any undertaking which is proposed, but not entered into, before that date.
- (10) A statutory instrument containing regulations under subsection (8) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

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- (11) Before making regulations under subsection (8) above, the Secretary of State shall consult—
  - (a) the Authority; and
  - (b) such other persons (if any) as the Secretary of State thinks it appropriate to consult.
- (12) The powers to make regulations under subsections (7) and (8) above are exercisable by the Assembly (and not by the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales.
- (13) Subsections (9) and (11) above apply in relation to regulations made by the Assembly under subsection (8) above by virtue of subsection (12) above as they apply in relation to regulations made by the Secretary of State under subsection (8) above.

#### **Determinations by the Authority**

- 17E (1) The Authority may determine, in a case referred to it by a licensed water supplier or a potential customer of a licensed water supplier, whether a proposed supply of water by the supplier to the customer would be in accordance with the retail authorisation given to the supplier in the licence.
- (2) The matters which the Authority may determine include the following matters—
- (a) the extent of the premises to be supplied for the purposes of section 17A(3) above;
  - (b) whether the premises to be supplied are household premises (as defined in section 17C above); and
  - (c) whether the threshold requirement is satisfied in relation to the premises to be supplied (construed in accordance with section 17D above),
- and also include any other matter the determination of which is relevant to those matters.

#### **Procedure for granting water supply licences**

- 17F (1) An application for—
- (a) a water supply licence;
  - (b) the variation of a retail licence so that it gives also the supplementary authorisation; or
  - (c) the variation of a combined licence so that it gives only the retail authorisation,
- shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.
- (2) Within the prescribed period after the making of such an application, the applicant shall publish in the prescribed manner a notice of the application containing such particulars as may be prescribed.

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- (3) The particulars which may be prescribed by virtue of subsection (2) above include the time within which, and the address at which, representations or objections with respect to the application may be made.
- (4) If the Secretary of State or the Authority proposes to refuse the application, he or it shall give to the applicant a notice—
- (a) stating that he or it proposes to refuse the application;
  - (b) stating the reasons why he or it proposes to refuse the application; and
  - (c) specifying the time within which representations or objections with respect to the proposed refusal may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) The Secretary of State may make provision by regulations disapplying subsections (2) and (3) above in relation to an application under subsection (1) above in such circumstances as may be prescribed.
- (6) A licence shall be in writing and, unless revoked or suspended in accordance with any condition contained in it, shall continue in force for such period as may be specified in or determined by or under the licence.
- (7) As soon as practicable after granting a licence or variation of a licence, the Secretary of State or the Authority shall serve a copy of the licence or licence as varied—
- (a) on the licence holder;
  - (b) on the Assembly;
  - (c) on the Chief Inspector of Drinking Water;
  - (d) on the Environment Agency;
  - (e) on the Council;
  - (f) on each relevant undertaker;
  - (g) on each licensed water supplier (other than the holder of the licence in question);
  - (h) if the licence or variation is granted by the Secretary of State, on the Authority;
  - (i) if the licence or variation is granted by the Authority, on the Secretary of State.
- (8) Any sums received by the Secretary of State or by the Authority by virtue of this section shall be paid into the Consolidated Fund.

### **Water supply licence conditions**

17G(1) A water supply licence may include—

- (a) such conditions as appear to the Secretary of State or, as the case may be, the Authority to be requisite or expedient having regard to the duties imposed on him or it by Part 1 of this Act;
- (b) conditions requiring the rendering to the Secretary of State of a payment on the grant of a water supply licence, or payments while such a licence is in force, or both, of such amount or amounts as may be determined by or under the conditions.

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- (2) Conditions may be included by virtue of subsection (1)(a) above in a water supply licence whether or not they are connected with the supply of water or the introduction of water into a water undertaker's supply system.
- (3) Conditions included in a water supply licence may—
  - (a) require the holder of the licence to comply with any direction given by a specified relevant person as to specified matters or matters which are of a specified description;
  - (b) require the holder of the licence to do or not to do specified things or things which are of a specified description, except in so far as a specified relevant person consents to the holder's not doing or doing them; and
  - (c) provide for the reference to and determination by a specified relevant person of specified questions, or questions which are of a specified description, which arise under or in connection with the licence.
- (4) For the purposes of subsection (3) above—
  - (a) the following are relevant persons—
    - (i) the Secretary of State;
    - (ii) the Authority;
    - (iii) the Assembly;
    - (iv) the Environment Agency; and
  - (b) "specified" means specified in the licence in question.
- (5) Conditions included in a water supply licence may contain provision for the conditions to have effect, cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined in accordance with the conditions.
- (6) Any such condition as is referred to in subsection (5) above shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of a licence.
- (7) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

### **Standard conditions of water supply licences**

- 17H(1) Such conditions as may be—
  - (a) determined by the Secretary of State (after consulting the Assembly); and
  - (b) published by him in such manner as he considers appropriate,shall be standard conditions of water supply licences granted by the Secretary of State or the Authority.
- (2) The standard conditions which may be determined may be different for—
  - (a) retail licences; and
  - (b) combined licences,

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and standard conditions relating to the retail authorisation may be different depending on whether they are to relate to retail licences or combined licences.

- (3) The power to determine standard conditions in relation to retail licences and combined licences may be exercised only before the grant of (respectively) the first retail licence and the first combined licence (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).
- (4) The standard conditions for the purposes of water supply licences of either description may contain provision—
  - (a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
  - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and
  - (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
- (5) Subject to subsection (6) below, each condition which is a standard condition shall be incorporated by reference in each water supply licence (or in each such licence to which the standard condition applies).
- (6) Subject to the following provisions of this section, the Secretary of State or the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as he or it considers requisite to meet the circumstances of a particular case.
- (7) Before excluding any standard conditions or making any modifications under subsection (6) above, the Secretary of State or the Authority shall give notice—
  - (a) stating that he or it proposes to exclude the conditions or make the modifications and setting out the effect of so doing;
  - (b) stating the reasons why he or it proposes to exclude the conditions or make the modifications; and
  - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,
 and shall consider any representations or objections which are duly made and not withdrawn.
- (8) A notice under subsection (7) above shall be given—
  - (a) by publishing the notice in such manner as the Secretary of State or (as the case may be) the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and
  - (b) by serving a copy of the notice—



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- (i) on the Assembly;
  - (ii) on the Chief Inspector of Drinking Water;
  - (iii) if the notice is published by the Secretary of State, on the Authority;
  - (iv) if the notice is published by the Authority, on the Secretary of State.
- (9) If, within the time specified in the notice under subsection (7) above, the Secretary of State (after consulting the Assembly) directs the Authority not to exclude or modify any standard condition, the Authority shall comply with the direction.
- (10) The Secretary of State or the Authority shall not exclude any conditions, or make any modifications, under subsection (6) above unless he or it is of the opinion that the exclusions or modifications are such that—
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and
  - (b) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).
- (11) The modification under subsection (6) above of part of a standard condition shall not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.

### **Modification of water supply licences by agreement**

- 17I (1) Subject to the following provisions of this section, the Authority may modify the conditions of a particular water supply licence.
- (2) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—
- (a) are requisite to meet the circumstances of the particular case; and
  - (b) are such that—
    - (i) the licence holder would not be unduly disadvantaged in competing with other holders of water supply licences; and
    - (ii) no other holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (3) Before making modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

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and shall consider any representations or objections which are duly made and not withdrawn.

- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on—
    - (i) the licence holder;
    - (ii) the Council;
    - (iii) the Secretary of State;
    - (iv) the Assembly; and
    - (v) the Chief Inspector of Drinking Water.
- (5) If, within the period specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.

#### **Modification of standard conditions of water supply licences**

- 17J (1) Subject to the following provisions of this section, the Authority may modify the standard conditions of retail licences or combined licences.
- (2) Where at any time the Authority modifies the standard conditions of retail licences or combined licences under this section the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that description.
- (3) Before making any modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and
  - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
  - (b) by serving a copy of the notice on—
    - (i) each relevant licence holder;
    - (ii) the Council;
    - (iii) the Secretary of State;
    - (iv) the Assembly; and

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- (v) the Chief Inspector of Drinking Water.
- (5) If, within the time specified in the notice under subsection (3) above, the Secretary of State (after consulting the Assembly) directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The Authority may not under this section make any modifications of the standard conditions of retail licences or combined licences unless—
- (a) no notice of objection to those modifications is given by any relevant licence holder to the Authority within the time specified in the notice under subsection (3) above;
  - (b) if one or more relevant licence holders give notice of objection to the Authority within that time—
    - (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be specified in an order made by statutory instrument by the Secretary of State; and
    - (ii) the percentage given by subsection (7) below is less than such percentage as may be so specified; or
  - (c) subsection (8) below applies to the case.
- (7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share at such time and in such manner as may be specified in an order under subsection (6) above.
- (8) This subsection applies where the Authority is satisfied that—
- (a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
  - (b) the modifications would remove or reduce the burden without removing any necessary protection; and
  - (c) the modifications are such that no holder of a water supply licence would be unduly disadvantaged in competing with other holders of such licences.
- (9) An order under subsection (6) above may include such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (10) Before making an order under subsection (6) above, the Secretary of State shall consult the Assembly.
- (11) A statutory instrument containing an order under subsection (6) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) Where the Authority modifies the standard conditions of retail licences or combined licences, the Authority shall—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.

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- (13) In this section “relevant licence holder”, in relation to proposed modifications of standard conditions of retail licences or combined licences, means the holder of a licence of that description—
- (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
  - (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 17H(4) above) at the time specified in the notice under subsection (3) above.

### **Water supply licences: modification references to Competition Commission**

- 17K(1) The Authority may make to the Competition Commission (in this section and the following provisions of this Chapter referred to as “the Commission”) a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which—
    - (i) relate to the carrying on of activities authorised or regulated by a particular licence; and
    - (ii) are specified in the reference,
 operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the conditions of the licence.
- (2) The Authority may make to the Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which—
    - (i) relate to the carrying on of activities authorised or regulated by retail licences or combined licences; and
    - (ii) are specified in the reference,
 operate, or may be expected to operate, against the public interest; and
  - (b) if so, whether the effects adverse to the public interest which those matters have, or may be expected to have, could be remedied or prevented by modifications of the standard conditions of licences of that description.
- (3) The Authority may, at any time, by notice given to the Commission vary a reference under this section by—
- (a) adding to the matters specified in the reference; or
  - (b) excluding from the reference some of the matters so specified,
- and on receipt of any such notice the Commission shall give effect to the variation.
- (4) The Authority may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—

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- (a) any effects adverse to the public interest which, in its opinion, the matters specified in the reference or variation have or may be expected to have; and
  - (b) any modifications of the relevant conditions by which, in its opinion, those effects could be remedied or prevented.
- (5) As soon as practicable after making a reference under this section or a variation of such a reference, the Authority shall—
  - (a) publish particulars of the reference or variation in such manner as it considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it; and
  - (b) serve a copy of the reference or variation on—
    - (i) the licence holder or, as the case may be, the relevant licence holders;
    - (ii) the Council;
    - (iii) the Secretary of State;
    - (iv) the Assembly; and
    - (v) the Chief Inspector of Drinking Water.
- (6) If, before the end of the period of twenty-eight days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the Commission—
  - (a) not to proceed with the reference; or
  - (b) not to give effect to the variation,the Commission shall comply with the direction.
- (7) It shall be the duty of the Authority, for the purpose of assisting the Commission in carrying out an investigation on a reference under this section or in carrying out functions under section 17P below, to give to the Commission—
  - (a) any information in the Authority’s possession which relates to matters falling within the scope of the investigation or the carrying out of those functions and which is either—
    - (i) requested by the Commission for that purpose; or
    - (ii) information which, in the Authority’s opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
  - (b) any other assistance which the Commission may require, and which it is within the Authority’s power to give, in relation to any such matters,and the Commission, for the purpose of carrying out any such investigation or such functions, shall take account of any information given to it for that purpose under this subsection.
- (8) In this section and the following provisions of this Chapter—
  - “relevant conditions”—
    - (a) in relation to a reference under subsection (1) above, means the conditions of the licence to which the reference relates; and
    - (b) in relation to a reference under subsection (2) above, means the standard conditions of the licences to which the reference relates; and

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“relevant licence holder” means the holder of a licence to which a reference under subsection (2) above relates.

- (9) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Authority by Part 1 of this Act.

#### **References under section 17K: time limits**

- 17L (1) Every reference under section 17K above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 17K above shall not have effect (and no action shall be taken in relation to it under section 17O below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
- (a) publish that extension in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

#### **References under section 17K: powers of investigation**

- 17M(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 17K above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).

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- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

#### **Water supply licences: reports on modification references**

- 17N(1) In making a report on a reference under section 17K above, the Commission—
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of its reasons for those conclusions as in its opinion is expedient for facilitating a proper understanding of those questions and of its conclusions;
  - (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where it concludes that any adverse effects so specified could be remedied or prevented by modifications of the relevant conditions, shall specify in the report modifications by which those effects could be remedied or prevented.
- (2) For the purposes of section 17O below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
  - (3) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 17K above as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

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- (4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 17K above.
- (5) In making any report on a reference under section 17K above the Commission must have regard to the following considerations before disclosing any information.
- (6) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (7) The second consideration is the need to exclude from disclosure (so far as practicable)—
  - (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (8) The third consideration is the extent to which the disclosure of the information mentioned in subsection (7)(a) or (b) above is necessary for the purposes of the report.
- (9) A report of the Commission on a reference under section 17K above shall be made to the Authority.
- (10) Subject to subsection (13) below, the Authority shall—
  - (a) on receiving a report on a reference under section 17K(1) above, serve a copy of it on—
    - (i) the licence holder;
    - (ii) the Council;
    - (iii) the Secretary of State; and
    - (iv) the Assembly; and
  - (b) not earlier than the relevant time, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (11) Subject to subsection (13) below, the Authority shall—
  - (a) on receiving a report on a reference under section 17K(2) above, serve a copy of it on—
    - (i) the Secretary of State; and
    - (ii) the Assembly; and
  - (b) not earlier than the relevant time—
    - (i) serve another copy on each relevant licence holder; and
    - (ii) not less than twenty-four hours after complying with subparagraph (i) above, publish another copy of the report in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.



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- (12) For the purposes of subsections (10) and (11) above, the “relevant time” means—
- (a) fourteen days after the copy of the report in question is received by the Secretary of State and the Assembly, or
  - (b) if copies are received by them on different days, fourteen days after the later day.
- (13) Subsection (14) below applies if it appears to the Secretary of State that the publication of any matter in a report on a reference under section 17K(1) or (2) above would be against—
- (a) the public interest; or
  - (b) the commercial interests of any person.
- (14) The Secretary of State may, not later than the relevant time for the purposes of subsection (10) or (11) above, direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be served and published as mentioned in paragraph (b) of that subsection; and the Authority shall comply with any such direction.

#### **Water supply licences: modification following report**

- 17O(1) Where a report of the Commission on a reference under section 17K above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
  - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
  - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the relevant conditions; and
  - (d) specifies modifications by which those effects could be remedied or prevented,
- the Authority shall, subject to the following provisions of this section, make such modifications of the relevant conditions as appear to it requisite for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences in consequence of a reference under section 17K(2) above, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.
- (3) Before making modifications under this section, the Authority shall have regard to the modifications specified in the report.
- (4) Before making modifications under this section, the Authority shall give notice—
- (a) stating that it proposes to make the modifications and setting out their effect;
  - (b) stating the reasons why it proposes to make the modifications; and

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- (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (4) above shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications;
  - (b) by serving a copy of the notice on the holder of the licence in question or, as the case may be, the relevant licence holders; and
  - (c) by serving a copy of the notice on—
    - (i) the Council;
    - (ii) the Secretary of State;
    - (iii) the Assembly; and
    - (iv) the Chief Inspector of Drinking Water.
- (6) After considering any representations or objections made in response to proposals set out in a notice under subsection (4) above, the Authority shall give notice to the Commission—
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
  - (b) stating the reasons for making the modifications.
- (7) The Authority shall include with the notice under subsection (6) above a copy of any representations or objections received in relation to the notice under subsection (4) above.
- (8) If the period of four weeks from the date on which the notice under subsection (6) above is given elapses without a direction under section 17P(1)(a) below having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
  - (b) if a direction under section 17P(1)(b) below has been given, make the modifications which are not specified in the direction.
- (9) The modification under subsection (1) above of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where at any time it modifies under subsection (1) above the standard conditions of retail licences or combined licences in consequence of a reference under section 17K(2) above, the Authority shall—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
  - (b) publish the modifications made for those purposes in such manner as it considers appropriate.

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### **Water supply licences: Commission’s power of veto following report**

- 17P (1) The Commission may, within the period of four weeks after the date on which it is given a notice under section 17O(6) above, direct the Authority—
- (a) not to make the modifications set out in that notice; or
  - (b) not to make such of the modifications as may be specified in the direction;
- and the Authority shall comply with any such direction.
- (2) The Secretary of State may—
- (a) within the period of four weeks after the date on which the Commission is given a notice under section 17O(6) above; and
  - (b) on the application of the Commission,
- direct that the period for giving a direction under subsection (1) above (and, accordingly, the period mentioned in section 17O(8) above) shall be extended by fourteen days.
- (3) The power to give a direction under subsection (1) above may only be exercised in respect of such of the modifications set out in the notice under section 17O(6)(a) above as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the Commission gives a direction under subsection (1) above, it shall—
- (a) give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
  - (b) make such modifications itself of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
    - (i) if the direction was given under subsection (1)(a) above, the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
    - (ii) if the direction was given under subsection (1)(b) above, such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 17O(8)(b) above.
- (5) In exercising its power under subsection (4)(b) above the Commission shall have regard to the matters as respects which duties are imposed on the Authority by Part 1 of this Act.
- (6) Before making modifications under subsection (4)(b) above the Commission shall give notice—
- (a) stating that it proposes to make the modifications and setting them out;
  - (b) stating the reason why it proposes to make them;
  - (c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.

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- (7) A notice under subsection (4)(a) or (6) above shall be given—
- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications;
  - (b) by serving a copy of the notice on—
    - (i) the Authority;
    - (ii) the holder of the licence in question or, as the case may be, the relevant licence holders;
    - (iii) the Council;
    - (iv) the Secretary of State;
    - (v) the Assembly; and
    - (vi) the Chief Inspector of Drinking Water.
- (8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 17K(1) above shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) Where, in consequence of a reference under section 17K(2) above, the Commission modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of licences of that description.
- (11) Where, in consequence of a reference under section 17K(2) above, the Commission modifies under subsection (4)(b) above the standard conditions of retail licences or combined licences, the Authority shall—
- (a) make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time, and
  - (b) publish the modifications made for those purposes in such manner as it considers appropriate.

### **Section 17P: supplementary**

- 17Q(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8) of section 17P above.
- (2) In giving any notice under subsection (4)(a) or (6) of section 17P above, or publishing any notice under subsection (8) of that section, the Commission must have regard to the following considerations before disclosing any information.
  - (3) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
  - (4) The second consideration is the need to exclude from disclosure (so far as practicable)—

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- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
  - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) above is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8) below, for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under section 17P above, as they apply for the purposes of any investigation on references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6) above, have effect as if—
  - (a) subsection (2) were omitted,
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction has been given by the Commission under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
  - “(ii) if earlier, the day on which a notice is published by the Commission under section 17P(8) of the Water Industry Act 1991 in connection with the reference concerned or, if no direction is given by the Commission under section 17P(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”

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- (9) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) above, have effect in relation to those sections as applied by virtue of that subsection.
- (10) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.

**Water supply licences: modification by order under other enactments**

17R (1) Where the OFT, the Commission or the Secretary of State (the “relevant authority”) makes a relevant order, the order may also provide for the modification of—

- (a) the conditions of a particular retail licence or combined licence; or
  - (b) the standard conditions of retail licences or combined licences,
- to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a retail licence or combined licence; or
  - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a retail licence or combined licence.
- (3) The modification under subsection (1)(a) above of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (4) Where at any time the relevant authority modifies under subsection (1)(b) above the standard conditions of retail licences or combined licences, the relevant authority—
- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that description granted after that time; and
  - (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers

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necessary or expedient of any conditions of licences of that description granted before that time.

- (5) Where at any time the relevant authority modifies standard conditions of retail licences or combined licences under subsection (4)(a) above for the purposes of their incorporation in licences, the relevant authority shall publish those modifications in such manner as the relevant authority considers appropriate.
- (6) Expressions used in subsection (2) above and in Part 3 or 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.”

#### Commencement Information

- I5** Sch. 4 para. 2 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(l)(i), **Sch. 1** (with Sch. 3 para. 7)
- I6** Sch. 4 para. 2 in force at 1.8.2005 for specified purposes by S.I. 2005/968, **art. 3(b)(i)**
- I7** Sch. 4 para. 2 in force at 1.10.2005 for specified purposes by S.I. 2005/2714, **art. 2(h)(i)** (with Sch. para. 58) (which transitional provisions in Sch. para. 5 are revoked (1.4.2007) by S.I. 2007/1021, art. 3(1)(b)(2))
- I8** Sch. 4 para. 2 in force at 1.12.2005 in so far as not already in force by S.I. 2005/2714, **art. 3(a)** (with Sch. para. 8)

3 After Chapter 2 of Part 3 of the WIA there is inserted—

### “CHAPTER 2A

#### SUPPLY DUTIES ETC: LICENSED WATER SUPPLIERS

##### *Duty of undertaker to supply licensed water supplier etc*

#### **Wholesale water supply by primary water undertaker**

66A(1) This section applies where—

- (a) a licensed water supplier requests its primary water undertaker to provide it with a supply of water for the purpose of supplying water to the premises of its customers in accordance with the retail authorisation; and
- (b) the premises are in the area of the undertaker.
- (2) Where this section applies, it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
- (a) to take any such steps—
- (i) for the purpose of connecting the premises in question with the undertaker’s supply system; or
- (ii) in respect of that system,
- as may be so provided for in order to enable the undertaker to provide the requested supply; and
- (b) having taken any such steps, to provide that supply.

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- (3) A primary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier, or to take any steps to enable it to provide such a supply, if—
- (a) both of the first and second conditions are satisfied; or
  - (b) the third condition is satisfied.
- (4) The first condition is that—
- (a) the premises to be supplied by the supplier do not consist in the whole or any part of a building; or
  - (b) the supply to be made by it to those premises is for purposes other than domestic purposes.
- (5) The second condition is that the provision of the supply by the undertaker would—
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
  - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The third condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
  - (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of this subsection.
- (7) Where—
- (a) a request has been made by a licensed water supplier to its primary water undertaker for the purposes of subsection (1) above; and
  - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.
- (8) A water undertaker is the primary water undertaker of a licensed water supplier for the purposes of this section and section 66C below if the undertaker's supply system is to be used for the purpose of making the supply to premises mentioned in those sections.
- (9) In this section and sections 66B and 66C below—
- (a) any reference to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above; and
  - (b) any reference to the retail authorisation shall be construed in accordance with section 17A(2) above.



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### **Introduction of water into water undertaker's supply system**

66B (1) This section applies where—

- (a) a qualifying licensed water supplier requests a water undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and
- (b) the premises are in the area of the undertaker.

(2) This section also applies where—

- (a) a water undertaker agrees to permit a qualifying licensed water supplier to introduce water into the undertaker's treatment works;
- (b) in connection with that introduction, the supplier requests the undertaker to permit it to introduce water into the undertaker's supply system, by means of which any particular supply of water to any premises in accordance with the retail authorisation is to take place, in connection with that supply; and
- (c) the premises are in the area of the undertaker.

(3) Where this section applies, it shall be the duty of the water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—

- (a) to take any such steps—
  - (i) for the purpose of connecting the premises in question with the undertaker's supply system;
  - (ii) for the purpose of connecting the treatment works of the qualifying licensed water supplier with that system (in a case falling within subsection (1) above);
  - (iii) for the purpose of connecting with that system any source used by the qualifying licensed water supplier for the purpose of supplying water other than for domestic or food production purposes (in a case falling within subsection (1) above); or
  - (iv) in respect of that system,  
as may be so provided for in order to enable the supplier to make the requested introduction of the water into that system; and
- (b) having taken any such steps, to permit the requested introduction of the water into that system.

(4) A water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable a qualifying water supplier to make such an introduction, if the first or second condition is satisfied.

(5) The first condition is that permitting the introduction of the water into the water undertaker's supply system would—

- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of

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- buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) The second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
- (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.
- (7) Where—
- (a) a request has been made by a qualifying licensed water supplier to a water undertaker for the purposes of subsection (1) or (2) above; and
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement shall not affect any liability of the supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.
- (8) In this section “treatment works”—
- (a) in relation to a water undertaker, means the works designated as treatment works by the Secretary of State for the purposes of section 17B(6) above;
- (b) in relation to a qualifying licensed water supplier, means the works designated from time to time by the Secretary of State as treatment works for the purposes of this paragraph.
- (9) Before designating any works for the purposes of subsection (8)(b) above, the Secretary of State shall consult the Assembly.
- (10) A list of any works designated for the purposes of subsection (8)(b) above shall be published from time to time by the Secretary of State in such manner as he considers appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them.
- (11) Any pipe laid in pursuance of subsection (3)(a)(ii) or (iii) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
- (12) In this section and section 66C below, references to a qualifying licensed water supplier are references to a licensed water supplier which is the holder of a combined licence (within the meaning of Chapter 1A of Part 2 of this Act).

### **Wholesale water supply by secondary water undertaker**

- 66C (1) This section applies where—
- (a) a qualifying licensed water supplier—

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- (i) requests a water undertaker other than its primary water undertaker (the “secondary water undertaker”) to provide a supply of water for the purpose of the supplier supplying water, using the primary water undertaker’s supply system, to the premises of the supplier’s customers in accordance with the retail authorisation; and
    - (ii) requests its primary water undertaker to permit it to introduce that water into its supply system; and
  - (b) the premises are in the area of the primary water undertaker.
- (2) Where this section applies—
  - (a) it shall be the duty of the secondary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
    - (i) to take any such steps in respect of its supply system as may be so provided for in order to enable it to provide the requested supply; and
    - (ii) having taken any such steps, to provide that supply; and
  - (b) it shall be the duty of the primary water undertaker, in accordance with an agreement or determination for such period and containing such terms and conditions as may be provided for under section 66D(2) below—
    - (i) to take any such steps specified in subsection (3) below as may be so provided for in order to enable the licensed water supplier to make the introduction of the requested supply of water into the primary water undertaker’s supply system; and
    - (ii) having taken any such steps, to permit the introduction of that supply of water into that supply system.
- (3) The steps mentioned in subsection (2)(b)(i) above are steps—
  - (a) for the purpose of connecting the premises in question with the primary water undertaker’s supply system;
  - (b) for the purpose of connecting that system with the secondary water undertaker’s supply system; or
  - (c) in respect of the primary water undertaker’s supply system.
- (4) If the first or second condition is satisfied—
  - (a) a secondary water undertaker shall not be required by virtue of this section to provide a supply of water to a licensed water supplier; and
  - (b) a primary water undertaker shall not be required by virtue of this section to permit the introduction of water into its supply system, or to take any steps to enable the licensed water supplier to make such an introduction.
- (5) The first condition is that the provision of the supply or permitting the introduction would—
  - (a) require the undertaker in question, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of

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- buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works; or
- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a) above.
- (6) This second condition is that there is a contravention in relation to the water fittings used or to be used in connection with—
- (a) the supply of water to the premises to be supplied by the supplier; or
- (b) the use of water in those premises,
- of such of the requirements of regulations under section 74 below as are prescribed for the purposes of section 66A(6) above.
- (7) Where—
- (a) requests have been made by a licensed water supplier to its primary water undertaker and secondary water undertaker for the purposes of subsection (1) above; and
- (b) the steps which either of those undertakers is required to take by virtue of the request made to it include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works,
- the undertaker’s failure to acquire the necessary authority or agreement shall not affect any liability of the licensed water supplier, under any term or condition in accordance with which those steps are taken, to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps.
- (8) Any pipe laid in pursuance of subsection (2)(b)(i) above by virtue of subsection (3)(b) above shall be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.

### **Sections 66A to 66C: determinations and agreements**

- 66D(1) The Authority may determine, in a case referred to it by a licensed water supplier, whether any condition specified in section 66A(4) to (6), 66B(5) or (6) or 66C(5) or (6) above is satisfied (subject to section 66F below).
- (2) The period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are—
- (a) those which are—
- (i) in a case falling within section 66A(2) or 66B(3) above, agreed between the water undertaker and the licensed water supplier in question; and
- (ii) in a case falling within section 66C(2) above, agreed between the water undertakers and the licensed water supplier in question; or
- (b) in default of such agreement, those which are determined by the Authority, in a case referred to it by the licensed water supplier in question, if they are acceptable to the supplier,
- (subject to the following provisions of this section and sections 66E and 66F below).

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- (3) The charges payable by a licensed water supplier to a water undertaker under an agreement under paragraph (a)(i) or (ii) of subsection (2) above or a determination under paragraph (b) of that subsection shall be fixed in accordance with the costs principle set out in section 66E below.
- (4) The Authority shall issue guidance in accordance with which the terms and conditions of an agreement under paragraph (a)(i) or (ii) of subsection (2) above shall be made.
- (5) Before issuing guidance under subsection (4) above, the Authority shall consult such persons as it considers appropriate.
- (6) The guidance issued under subsection (4) above shall include guidance with respect to the fixing of charges in accordance with subsection (3) above.
- (7) Subsection (8) below applies if it appears to the Authority that an agreement under paragraph (a)(i) or (ii) of subsection (2) above has not been made in accordance with—
  - (a) subsection (3) above; or
  - (b) the guidance issued under subsection (4) above.
- (8) The Authority may require the parties to the agreement to—
  - (a) modify the agreement; or
  - (b) terminate the agreement,and that requirement shall be enforceable under section 18 above by the Authority.
- (9) Neither the OFT nor the Authority may exercise, in respect of an agreement under paragraph (a)(i) or (ii) of subsection (2) above, the powers conferred by—
  - (a) section 32 of the Competition Act 1998 (directions in relation to agreements); and
  - (b) subsection (2) of section 35 of that Act (interim directions).
- (10) Subsection (9)(b) above does not apply to the exercise of powers in respect of conduct—
  - (a) which is connected with an agreement under paragraph (a)(i) or (ii) of subsection (2) above; and
  - (b) in respect of which subsection (1)(b) of section 35 of that Act applies.

#### **Section 66D: costs principle**

- 66E (1) The costs principle referred to in subsection (3) of section 66D above is that the charges payable by a licensed water supplier to a water undertaker, under the agreement or determination mentioned in that subsection, shall enable the undertaker to recover from the supplier—
- (a) any expenses reasonably incurred in performing any duty under sections 66A to 66C above in accordance with that agreement or determination, and
  - (b) the appropriate amount in respect of qualifying expenses and a reasonable return on that amount,

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to the extent that those sums exceed any financial benefits which the undertaker receives as a result of the supplier supplying water to the premises of relevant customers.

- (2) In subsection (1) above “qualifying expenses” means expenses (whether of a capital nature or otherwise) that the water undertaker has reasonably incurred or will reasonably incur in carrying out its functions.
- (3) For the purposes of subsection (1)(b) above, the appropriate amount is the amount which the water undertaker—
  - (a) reasonably expected to recover from relevant customers; but
  - (b) is unable to recover from those customers as a result of their premises being supplied with water by the licensed water supplier.
- (4) Nothing in subsection (3) above shall enable a water undertaker to recover any amount—
  - (a) to the extent that any expenses can be reduced or avoided; or
  - (b) to the extent that any amount is recoverable in some other way (other than from other customers of the undertaker).
- (5) In this section “relevant customers” means customers to whose premises the licensed water supplier is to make any supply of water in connection with which the agreement or determination mentioned in subsection (1) above is made.

#### **Section 66D: supplementary**

- 66F (1) Before the Authority makes—
- (a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66B(5) or (6) above is satisfied; or
  - (b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which a water undertaker is to perform any duty under section 66B above, it shall consult the Secretary of State (subject to subsection (3) below).
- (2) Before the Authority makes—
- (a) a determination for the purposes of subsection (1) of section 66D above as to whether any condition specified in section 66C(5) or (6) is satisfied; or
  - (b) a determination for the purposes of subsection (2)(b) of section 66D above as to the period for which and terms and conditions on which the water undertakers are to perform any duty under section 66C above, it shall consult the Secretary of State (subject to subsections (3) and (4) below) and the Environment Agency.
- (3) If—
- (a) a determination mentioned in subsection (1) or (2) above is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales; and

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- (b) in the case of a determination mentioned in subsection (2) above, the area of the secondary water undertaker in question is wholly or mainly in Wales,  
the Authority shall consult the Assembly (and not the Secretary of State).
- (4) If a determination mentioned in subsection (2) above—
  - (a) is in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in—
    - (i) England; or
    - (ii) Wales;
  - (b) but the area of the secondary water undertaker in question is (respectively) wholly or mainly in—
    - (i) Wales; or
    - (ii) England,the Authority shall consult the Assembly (as well as the Secretary of State).
- (5) The Authority shall publish guidance issued under section 66D(4) above in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) The Authority may from time to time revise the guidance so issued.
- (7) Before revising any guidance under subsection (6) above, the Authority shall consult such persons as it considers appropriate.
- (8) Subsection (5) above applies to guidance revised under subsection (6) above as it applies to guidance issued under section 66D(4) above.
- (9) In this section, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.
- (10) Where the period for which and terms and conditions on which a water undertaker is to perform any duty under sections 66A to 66C above are determined in accordance with subsection (2)(b) of section 66D above, they shall have effect as if they had been agreed between the parties in question (and references in the following provisions of this Act to an agreement under that section shall be construed accordingly).

### **Designation of strategic supply**

- 66G(1) Subsection (2) below applies if at any time the Authority determines that an introduction of water which a water undertaker is required to permit under section 66B or 66C above in accordance with an agreement under section 66D above constitutes a strategic supply of water.
- (2) The Authority shall designate the introduction as a strategic supply.
- (3) Subsection (4) below applies if—
  - (a) a water undertaker requests the Authority to make a determination that an introduction of water constitutes a strategic supply for the purposes of subsection (1) above, or
  - (b) the Authority otherwise proposes to make a determination that an introduction of water constitutes a strategic supply for the purposes of that subsection.

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- (4) The Authority shall give notice of the request or proposed determination to—
  - (a) the Secretary of State;
  - (b) the Assembly;
  - (c) the Environment Agency;
  - (d) the other party or parties, or the parties, to the agreement under section 66D above; and
  - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that an introduction designated under this section as a strategic supply no longer constitutes such a supply, it shall cancel its designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that an introduction no longer constitutes a strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, an introduction of water is a strategic supply if, without that introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers as well as supplying customers of the licensed water supplier in question with water for domestic purposes.

#### **Designation of collective strategic supply**

- 66H(1) Subsection (2) below applies if at any time the Authority determines that two or more introductions of water—
  - (a) which are made by a licensed water supplier; and
  - (b) which a water undertaker is required to permit under section 66B or 66C above in accordance with agreements under section 66D above, constitute a collective strategic supply of water.
- (2) The Authority shall designate the introductions as a collective strategic supply.
- (3) Subsection (4) below applies if—
  - (a) a water undertaker requests the Authority to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of subsection (1) above, or



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- (b) the Authority otherwise proposes to make a determination that two or more introductions of water constitute a collective strategic supply for the purposes of that subsection.
- (4) The Authority shall give notice of the request or proposed determination to—
- (a) the Secretary of State;
  - (b) the Assembly;
  - (c) the Environment Agency;
  - (d) the other party or parties, or the parties, to the agreements under section 66D above; and
  - (e) such other persons (if any) as the Authority thinks it appropriate to notify.
- (5) Any such notice shall specify the time (not being less than twenty-eight days from the date on which the notice was given) within which representations or objections with respect to the request or proposed determination may be made.
- (6) The Authority shall consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that introductions designated under this section as a collective strategic supply no longer constitute such a supply, it shall cancel their designation.
- (8) If the Authority proposes to make a determination under subsection (7) above that introductions no longer constitute a collective strategic supply, it shall give notice of the proposed determination to the persons specified in paragraphs (a) to (d) of subsection (4) above.
- (9) Subsection (5) above applies to a notice under subsection (8) above as it applies to a notice under subsection (4) above (and subsection (6) above applies accordingly).
- (10) For the purposes of this section, introductions of water are a collective strategic supply if, without those introductions being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers as well as supplying the customers of the licensed water supplier in question with water for domestic purposes.

### *Offences*

#### **Prohibition on unauthorised use of supply system**

- 66I (1) Subject to subsections (2) and (3) and section 66K below, no person shall use a water undertaker's supply system for the purpose of supplying water to any premises of a customer.
- (2) Subsection (1) above shall not apply where the supply is made—
- (a) by the water undertaker, or
  - (b) by a licensed water supplier in pursuance of its licence.
- (3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.

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- (4) A person who contravenes subsection (1) above shall be guilty of an offence.
- (5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.
- (6) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.
- (7) No proceedings for an offence under this section shall be instituted except by—
  - (a) the Secretary of State, or
  - (b) the Authority.
- (8) The functions of—
  - (a) making regulations under subsection (3) above; and
  - (b) instituting proceedings under subsection (7)(a) above,
 are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.
- (9) In this section and sections 66J and 66L below, references to the supply system of a water undertaker shall be construed in accordance with section 17B(5) above.

#### **Prohibition on unauthorised introduction of water**

- 66J (1) Subject to subsections (2) and (3) and section 66K below, no person shall introduce water into a water undertaker's supply system (other than the undertaker itself).
- (2) Subsection (1) above shall not apply where the water is introduced—
    - (a) by a licensed water supplier in pursuance of its licence, or
    - (b) by another water undertaker under an agreement for a supply of water in bulk.
  - (3) The Secretary of State may by regulations specify further circumstances in which subsection (1) above shall not apply.
  - (4) A person who contravenes subsection (1) above shall be guilty of an offence.
  - (5) Any undertaking entered into which involves a contravention of subsection (1) above shall be unenforceable.
  - (6) A person guilty of an offence under this section shall be liable—
    - (a) on summary conviction, to a fine not exceeding £20,000, and
    - (b) on conviction on indictment, to a fine.
  - (7) For the purposes of section 210 below, the penalty on conviction on indictment of an offence under this section shall be deemed to include imprisonment (in addition to or instead of a fine) for a term not exceeding two years.

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- (8) No proceedings for an offence under this section shall be instituted except by—
- (a) the Secretary of State; or
  - (b) the Authority.
- (9) The functions of—
- (a) making regulations under subsection (3) above; and
  - (b) instituting proceedings under subsection (8)(a) above,
- are exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.

### **Sections 66I and 66J: exemptions**

- 66K(1) The Secretary of State may by order made by statutory instrument grant exemption from section 66I(1) or 66J(1) above to—
- (a) a person or persons of a class;
  - (b) generally or to such extent as may be specified in the order; and
  - (c) unconditionally or subject to such conditions as may be so specified.
- (2) Before making an order under subsection (1) above the Secretary of State shall give notice—
- (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
  - (b) stating the reasons why he proposes to make the order in the terms proposed; and
  - (c) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (3) The notice required by subsection (2) above shall be given—
- (a) by serving a copy of it on the Authority; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.
- (4) Notice of an exemption granted to a person shall be given—
- (a) by serving a copy of the exemption on him; and
  - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
- (a) persons of that class; and
  - (b) other persons who may be affected by it.
- (6) An exemption may be granted—

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- (a) indefinitely; or
  - (b) for a period specified in, or determined by or under, the exemption.
- (7) Conditions included in an exemption by virtue of subsection (1)(c) above may, in particular, require any person carrying on any activity in pursuance of the exemption—
- (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
  - (b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and
  - (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

### **Section 66K: supplementary**

- 66L (1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a person under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (2) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to persons of a class under section 66K(1) above or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) in accordance with any provision of the order by which the exemption was granted; or
  - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a class under section 66K(1) above from any person of that class—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (4) Before making an order under subsection (1)(b) or (c) or (2) above or giving a direction under subsection (3)(b) or (c) above, the Secretary of State shall—
- (a) consult the Authority; and
  - (b) give notice—

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**Changes to legislation:** *Water Act 2003, SCHEDULE 4 is up to date with all changes known to be in force on or before 08 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (i) stating that he proposes to make such an order or give such a direction;
  - (ii) stating the reasons why he proposes to make such an order or give such a direction; and
  - (iii) specifying the time (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) The notice under subsection (4) above shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c) above, by serving a copy of it on the person to whom the exemption was granted;
  - (b) where he is proposing to make an order under subsection (2) above, by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and
  - (c) where he is proposing to give a direction under subsection (3)(b) or (c) above, by serving a copy of it on the person from whom he proposes to withdraw the exemption.
- (6) A statutory instrument containing an order under subsection (1) or (2) above or subsection (1) of section 66K above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The power to—
- (a) make an order under subsection (1) or (2) above or subsection (1) of section 66K above; or
  - (b) give a direction under subsection (3) above,
- is exercisable by the Assembly (and not by the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales.
- (8) Accordingly, subsections (1) to (5) above and section 66K above apply in relation to an order made or a direction given by the Assembly by virtue of subsection (7) above as they apply in relation to an order made or direction given by the Secretary of State.”

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**Commencement Information**

- 19** Sch. 4 para. 3 in force at 1.4.2004 for specified purposes by S.I. 2004/641, art. 3(1)(i), Sch. 1 (with Sch. 3 para. 7)
- 110** Sch. 4 para. 3 in force at 1.12.2005 in so far as not already in force by S.I. 2005/2714, art. 3(a) (with Sch. para. 8)

- 4 (1) The Water Services Regulation Authority (“the Authority”) may, in accordance with this paragraph, modify the conditions of appointment of a company appointed under Chapter 1 of Part 2 of the WIA to be a water undertaker where it considers it necessary or expedient to do so in consequence of the amendments to the WIA made by this Schedule and Schedule 8.

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- (2) Where the Authority modifies under sub-paragraph (1) any conditions of appointment it may make such incidental or consequential modifications as it considers necessary or expedient of other conditions of the appointment.
- (3) Before making any modifications under sub-paragraph (1) or (2), the Authority shall consult—
  - (a) the company holding the appointment, and
  - (b) such other persons (if any) as the Authority thinks it appropriate to consult.
- (4) The powers of the Authority under sub-paragraphs (1) and (2) may not be exercised after the end of the period of two years beginning with the first day on which all of the provisions of this Schedule and Schedule 8.
- (5) The Secretary of State may give directions to the Authority for the purpose of securing that conditions of appointment are modified in consequence of the amendments to the WIA made by this Schedule and Schedule 8; and the Authority shall comply with any such direction.

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**Commencement Information**

**III** Sch. 4 para. 4 in force at 1.12.2005 by S.I. 2005/2714, art. 3(a) (with Sch. para. 8)

**Changes to legislation:**

Water Act 2003, SCHEDULE 4 is up to date with all changes known to be in force on or before 08 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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

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

- s. 52(9) inserted by [2014 c. 21 Sch. 7 para. 133\(3\)](#)