

2004 No. 2528 (C. 106)

WATER

The Water Act 2003 (Commencement No. 2, Transitional Provisions and Savings) Order 2004

Made - - - -

23rd September 2004

The Secretary of State, in exercise of the powers conferred upon her by sections 104(6)(a) and 105(3) to (6) of the Water Act 2003(a) and having consulted the National Assembly for Wales(b), hereby makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Water Act 2003 (Commencement No. 2, Transitional Provisions and Savings) Order 2004.

(2) In this Order—

“the Act” means the Water Act 2003;

“the Council” means the Consumer Council for Water; and

“customer service committees” means the committees maintained under section 28 of the WIA(c).

(3) Unless the contrary intention appears, any reference in this Order to a section or Schedule is a reference to a section of or a Schedule to the Act.

Provisions coming into force on 1st October 2004

2. The following provisions of the Act shall come into force on 1st October 2004—

(a) section 26 (recovery of compensation from new licence-holder);

(b) sections 28 and 29 (water resources management schemes);

(c) section 31 (bulk supplies);

(d) in section 38 (forward work programmes and annual reports)—

(i) subsection (1); and

(ii) subsection (2) in so far as it repeals section 193 of the WIA;

(a) 2003 c. 37.

(b) The power in section 105(3) to appoint a day on which provisions of the Water Act 2003 shall come into force is vested in the “appropriate authority”. The appropriate authority in relation to provisions of the Act for which a day is appointed by this Order (except sections 77, 78, 80 and 86) is the Secretary of State after consulting “the Assembly” (the National Assembly for Wales: section 105(2)); the appropriate authority in relation to sections 77, 78, 80 and 86 is the Secretary of State in relation to England and the Assembly in relation to Wales (section 105(5) and (6)).

(c) The expression “the WIA” means the Water Industry Act 1991 (c. 56) (section 105(2) of the Act).

- (e) section 48(1) (financial penalties) in so far as it inserts into the WIA–
 - (i) in section 22A, subsection (4) in so far as that subsection has effect for the purpose of defining “enforcement authority”, subsection (11) in so far as it has effect for the purpose of enabling the Secretary of State to make an order, and subsection (12); and
 - (ii) section 22B;
- (f) section 49 (enforcement of certain provisions);
- (g) section 50 (links between directors’ pay and standards of performance);
- (h) sections 54 (determination references under section 12 of the WIA) and 55 (conditions of appointment under the WIA);
- (i) section 59 (charges for services provided with the help of an undertaker);
- (j) section 62 (water resources management plans) and section 63 (drought plans) in so far as these sections have effect for the purpose of enabling the Secretary of State to make regulations and give directions in relation to drought plans under section 39B of the WIA or 37B, as applied by section 39B(5) of the WIA;
- (k) section 74 (Environment Agency to be enforcement authority under the Reservoirs Act 1975);
- (l) section 76 (service of documents);
- (m) section 77 (flood plans: large raised reservoirs);
- (n) section 78 (national security);
- (o) section 79 (offences);
- (p) section 80 (Crown application);
- (q) in section 86 (contaminated land: pollution of controlled waters)–
 - (i) in subsection (2), paragraph (f); and
 - (ii) subsection (1) in so far as it relates to that paragraph;
- (r) section 87 (transfer of discharge consents);
- (s) in section 100 (devolution: Wales)–
 - (i) subsection (1);
 - (ii) subsection (2)(a)(ii), (vi) and (ix), (b)(ii), (iv) and (x), (d) and (g) in so far as they relate to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article;
 - (iii) subsection (3) in so far as it relates to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article;
 - (iv) subsection (4)(a);
 - (v) subsection (6), in so far as it relates to any Act generally or to references to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article; and
 - (vi) subsection (7), in so far as it relates to subsection (6) (so far as brought into force by sub-paragraph (v)) or the amendments made by subsections (1), (2), (3) and (4) (so far as brought into force by sub-paragraphs (i) to (iv));
- (t) section 101(1) (minor and consequential amendments and repeals), in so far as it relates to the amendments made–
 - (i) by paragraph 2 of Schedule 7 and by paragraph 1 of Schedule 7 in so far as it relates to paragraph 2;
 - (ii) in paragraph 32 of Schedule 7, by sub-paragraph (4)(b) for all remaining purposes, and by sub-paragraph (1) in so far as it relates to sub-paragraph (4)(b) as brought into force by this article;
 - (iii) by paragraph 38 of Schedule 7;

- (iv) by paragraph 20 of Schedule 8 and by paragraph 2 of that Schedule in so far as it relates to paragraph 20; and
- (v) in paragraph 50 of Schedule 8, by sub-paragraph (3) in so far as the provision it introduces has effect for the purposes of the provisions of the WIA amended or introduced by a provision brought into force by this article, and by paragraph 2 of that Schedule in so far as it relates to that sub-paragraph; and
- (u) section 101(2), in so far as it relates to the following repeals specified in Schedule 9—
 - (i) the repeal of section 12(3)(b)(i), (4) and (5) of the WIA;
 - (ii) the repeal of section 193 of the WIA;
 - (iii) the repeals in relation to section 22(1) of and Schedule 1 to the Reservoirs Act 1975(a);
 - (iv) the repeals in relation to paragraph 11 of Schedule 10 to the WRA(b);
 - (v) the repeal of paragraph 13(2) of Schedule 10 to the Competition Act 1998(c); and
 - (vi) the repeal in relation to the references in the National Assembly for Wales (Transfer of Functions) Order 1999(d) to sections 18 to 22 of the WIA (in so far as it relates to sections 18 and 20 as amended by the provisions of the Act which are brought into force by virtue of this article) and sections 68 to 70 of the WIA (in so far as it relates to section 70).

Provisions coming into force on 29th December 2004

3. Section 101(1) (minor and consequential amendments and repeals), in so far as it relates to the amendment made by paragraph 27(2) of Schedule 7, shall come into force on 29th December 2004.

Transitional provisions and savings

- 4.—(1) The transitional provisions and savings in the Schedule shall have effect.
(2) Paragraph (1) shall come into force on 1st October 2004.

23rd September 2004

Elliot Morley
Minister of State,
Department for Environment, Food and Rural Affairs

(a) 1975 c. 23.

(b) The expression “the WRA” means the Water Resources Act 1991 (c. 57) (section 105(2) of the Act).

(c) 1998 c. 41.

(d) S.I. 1999/672.

TRANSITIONAL PROVISIONS AND SAVINGS

1. Section 61A of the WRA (recovery of compensation from new licence-holder), inserted by section 26, shall not apply where the application for the licence referred to in section 61A(1)(b) was received by the Environment Agency before 1st October 2004.

2. In section 192B of the WIA (annual report), the reference to “financial year” shall not include a financial year ending before 31st March 2005.

3. Until such time as section 35(1) (the Council), in so far as it inserts section 27A of the WIA (establishment of the Council and committees), and section 35(2) to (4) are fully in force—

- (a) section 192A of the WIA (forward work programmes) shall have effect as if—
 - (i) the references to the Council in paragraphs (1), (3), (4) and (5) were omitted;
 - (ii) the reference to the Council in paragraph (6) were a reference to the customer service committees; and
 - (iii) subsection (7) were omitted;
- (b) section 192B(7) of the WIA (annual and other reports) shall have effect as if the reference to the Council were references to the customer service committees; and
- (c) in sections 192A and 192B of the WIA, projects, functions or activities shall not be taken to include the projects, functions or activities of the customer service committees.

4.—(1) The duty in section 35A(2) of the WIA (remuneration and standards of performance) shall first apply in relation to the first financial year of a company which ends on or after 31st March 2005.

(2) The duty in section 35A(5) of the WIA shall first apply in relation to the first financial year of a company which begins on or after 1st April 2005.

5. Sections 54 (determination references under section 12 of the WIA) and 55 (conditions of appointment under the WIA), in so far as they relate to the introduction of section 16B(6) of the WIA, or that section as applied by the introduction of section 12(3B) of the WIA, shall have effect in relation to the application of the provisions in sections 110(1) to (4), (6), (8) and (9) and 111 to 115 of the Enterprise Act 2002(a) relating to penalties (as those provisions are applied by section 16B(6) of the WIA or that section as applied by section 12(3B) of the WIA)—

- (a) only for the purposes of enabling an order to be made under section 111(4) or (6) of the Enterprise Act 2002; and
- (b) as if the reference to subsection (6) in section 110(5) of the Enterprise Act 2002 were omitted.

6. The amendments made by section 87 shall not apply in relation to any transfer of a consent under paragraph 11(1) of Schedule 10 to the WRA which takes effect before 1st October 2004.

7. Section 100(6) (devolution: Wales) shall have effect in relation to references to any Act generally only to the extent that those Acts have been amended as at the date of this Order.

8. Until the coming fully into force of section 36(1) (transfer to the Water Services Regulation Authority and the Council of functions, property etc), any reference to the Water Services Regulation Authority in—

- (a) any provision of the Act which comes into force by virtue of this Order; or

(a) 2002 c. 40.

(b) any provision of any enactment which is introduced or amended by the Act and by virtue of this Order,

shall have effect as if it were a reference to the Director General of Water Services.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Water Act 2003, and makes transitional provision and savings in respect of some of those provisions.

The provisions of Part 1 of the Act brought into force on 1st October 2004 relate to the recovery of compensation from new holders of abstraction licences (section 26), water resources management arrangements between the Environment Agency and water undertakers (section 29) and between the Environment Agency and any other abstractor (sections 28 and 29) and proposals for bulk supply arrangements (section 31).

The provisions in Part 2 of the Act brought into force on 1st October 2004 relate to the new regulatory arrangements for the water industry. They introduce forward work programmes and revised reporting for the Water Services Regulation Authority (section 38), and new reporting arrangements on links between directors' pay and standards of performance in the water industry (section 50). Provisions are brought into force relating to the new financial penalties regime that will be established under the Water Industry Act 1991 (section 48), enforcement under sections 18 and 20 of that Act (section 49) and references to the Competition Commission under that Act (sections 54 and 55). The offence of supplying water unfit for human consumption is also extended so as to apply to certain persons in addition to the water undertaker (employees and self-employed persons involved in the supply of water) (section 101(1) and Schedule 8).

The provisions in Part 3 of the Act brought into force on 1st October 2004:

- (a) extend the powers of the Water Services Regulation Authority when making orders in relation to charges for the resale of water and sewerage services (section 59);
- (b) enable the Secretary of State to make subordinate legislation in relation to the preparation of drought plans (section 62 and 63);
- (c) in relation to the Reservoirs Act 1975, provide that the Environment Agency shall be the enforcement authority in England and Wales (section 74); make provision in relation to the service of documents (section 76) and offences (section 79); make provision in England for the preparation of flood plans for large raised reservoirs (section 77), including provision in relation to such plans in connection with national security (section 78), and for crown application (section 80);
- (d) clarify the definition of "controlled waters" (section 86); and
- (e) relate to the procedure for the transfer of discharge consents (section 87).

Sections 74(1) and 76 extend to Scotland.

The provision brought into force on 29th December 2004 amends a provision of Water Industry Act 1991 inserted by section 70(1) of the Enterprise Act 2002, which will be brought into force on the same day in relation to water industry mergers.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Water Act 2003 have been brought into force in England and Wales by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s.6 (partially)	1.4.2004	2004/641
s.9	1.4.2004	2004/641
s.10 (partially)	1.4.2004	2004/641
s.15	1.4.2004	2004/641
s.16 (partially)	1.4.2004	2004/641
s.18	1.4.2004	2004/641
s.19 (partially)	1.4.2004	2004/641
s.20	1.4.2004	2004/641
s.25 (partially)	1.4.2004	2004/641
s.27	1.4.2004	2004/641
s.37	1.4.2004	2004/641
s.53*	1.4.2004	2004/641
s.56, Sch.4 (partially)	1.4.2004	2004/641
s.57	1.4.2004	2004/641
s.60	1.4.2004	2004/641
s.61	1.4.2004	2004/641
s.64	1.4.2004	2004/641
s.65	1.4.2004	2004/641
s.66 [†]	1.4.2004	2004/641
s.67	1.4.2004	2004/910 (W. 93)
s.68 [†]	1.4.2004	2004/641
s.71	1.4.2004	2004/641
s.72	1.4.2004	2004/641
s.82	1.4.2004	2004/641
s.83	1.4.2004	2004/641
s.84	1.4.2004	2004/641
s.85*	1.4.2004	2004/641
s.90	28.5.2004	2004/641
s.91	28.5.2004	2004/641
s.92	28.5.2004	2004/641
s.93	28.5.2004	2004/641
s.94	28.5.2004	2004/641
s.95	28.5.2004	2004/641
s.96	28.5.2004	2004/641
s.97	28.5.2004	2004/641
s.99	28.5.2004	2004/641
s.100 (partially)	17.3.2004	2004/641
s.100 (partially)	1.4.2004	2004/641
s.100 (partially)	28.5.2004	2004/641
s.101(1), Sch.7 (partially)	1.4.2004	2004/641
s.101(1), Sch.8 (partially)	1.4.2004	2004/641
s.101(2), Sch.9 (partially)	1.4.2004	2004/641
s.101(2), Sch.9 (partially)	28.5.2004	2004/641

* These provisions also extend partially to Scotland (section 105(9) of the Act) and were brought into force in Scotland by the same order.

† These provisions also extend to Scotland (section 105(9) of the Act) and were brought into force in Scotland by the same order.

The following provisions of the Act have been brought into force in so far as they apply in relation to England by a commencement order made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s.69 [†]	17.3.2004	2004/641
s.75 [†]	1.4.2004	2004/641
s.81	1.4.2004	2004/641
s.101(1), Sch.7 (partially) [‡]	17.3.2004	2004/641
s.101(2), Sch.9 (partially) [‡]	17.3.2004	2004/641

[‡] These provisions have been brought into force in relation to Wales by S.I. 2004/910 (W. 93).

The following provision of the Act will come into force in England and Wales by virtue of a commencement order made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s.24	1.4.2005	2004/641

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