

UK: Water Industry Act 1991 (c. 56)

1991 Chapter c. 56

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An Act to consolidate enactments relating to the supply of water and the provision of sewerage services, with amendments to give effect to recommendations of the Law Commission. [25th July 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I

Preliminary

The Director General of Water Services

The Director General of Water Services.

{PRIVATE} 1.—(1) There shall continue to be an officer known as the Director General of Water Services (in this Act referred to as "the Director") for the purpose of carrying out the functions of that Director under this Act.

(2) Appointment of any person to hold office as the Director shall be made by the Secretary of State.

(3) An appointment of a person to hold office as the Director shall be for a term not exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.

(4) The Director may at any time resign his office as the Director by notice addressed to the Secretary of State; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.

(5) Subject to the preceding provisions of this section, the Director shall hold and vacate office as such in accordance with the terms of his appointment.

(6) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

General duties

General duties with respect to water industry.

2.—(1) This section shall have effect for imposing duties on the Secretary of State and on the Director as to when and how they should exercise and perform the following powers and duties, that is to say—

(a) in the case of the Secretary of State, the powers and duties conferred or imposed on him by virtue of the provisions of this Act relating to the regulation of relevant undertakers; and
(b) in the case of the Director, the powers and duties conferred or imposed on him by virtue of any of those provisions, by the provisions relating to the financial conditions of requisitions or by the provisions relating to the movement of certain pipes.

(2) The Secretary of State or, as the case may be, the Director shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner that he considers is best calculated—

(a) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of England and Wales; and

(b) without prejudice to the generality of paragraph (a) above, to secure that companies holding appointments under Chapter I of Part II of this Act as relevant undertakers are able (in particular, by securing reasonable returns on their capital) to finance the proper carrying out of the functions of such undertakers.

(3) Subject to subsection (2) above, the Secretary of State or, as the case may be, the Director shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner that he considers is best calculated—

(a) to ensure that the interests of every person who is a customer or potential customer of a company which has been or may be appointed under Chapter I of Part II of this Act to be a relevant undertaker are protected as respects the fixing and recovery by that company of water and drainage charges and, in particular—

(i) that the interests of customers and potential customers in rural areas are so protected; and

(ii) that no undue preference is shown, and that there is no undue discrimination, in the fixing of those charges;

(b) to ensure that the interests of every such person are also protected as respects the other terms on which any services are provided by that company in the course of the carrying out of the functions of a relevant undertaker and as respects the quality of those services;

(c) to ensure that the interests of every such person are further protected as respects benefits that could be secured for them by the application in a particular manner of any of the proceeds of any disposal (including a disposal before the Secretary of State and the Director became subject to the duties imposed by virtue of this paragraph) of any of that company's protected land or of any interest or right in or over any of that land;

(d) to promote economy and efficiency on the part of any such company in the carrying out of the functions of a relevant undertaker; and

(e) to facilitate effective competition, with respect to such matters as he considers appropriate, between persons holding or seeking appointments under that Chapter.

(4) In performing his duty under subsection (3) above, so far as it requires him to do anything in the manner which he considers is best calculated to ensure that the interests of the customers and potential customers of any company are protected as respects the quality of any services provided by that company in the course of the carrying out of the functions of a relevant undertaker, the Secretary of State or, as the case may be, the Director shall take into account, in particular, the interests of those who are disabled or of pensionable age.

(5) In this section the references to water and drainage charges are references to—

(a) any charges in respect of any services provided in the course of the carrying out of the functions of a relevant undertaker; and

(b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any of its customers or potential customers to pay.

(6) For the purposes of this section—

(a) the reference in subsection (1) above to the provisions of this Act relating to the regulation of relevant undertakers is a reference to the provisions contained in Part II of this Act (except section 28 and Schedule 4), or in any of sections 38, 39, 95, 96, 153, 181, 182, 193 to 195 and 201 to 203 below;

(b) the reference in that subsection to the provisions relating to the financial conditions of requisitions is a reference to the provisions contained in sections 42, 43, 48, 99 and 100 below; and

(c) the reference in that subsection to the provisions relating to the movement of certain pipes is a reference to the provisions of section 185 below.

General environmental and recreational duties.

3.—(1) It shall be the duty of each of the following, that is to say—

(a) the Secretary of State;

(b) the Minister of Agriculture, Fisheries and Food;

(c) the Director; and

(d) every company holding an appointment as a relevant undertaker, in formulating or considering any proposals relating to any functions of a relevant undertaker (including, in the case of such a company, any functions which, by virtue of that appointment, are functions of the company itself) to comply with the requirements imposed in relation to the proposals by subsections (2) and (3) below.

(2) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are—

(a) a requirement, so far as may be consistent—

(i) with the purposes of any enactment relating to the functions of the undertaker; and

(ii) in the case of the Secretary of State and the Director, with their duties under section 2 above, so to exercise any power conferred with respect to the proposals on the person subject to the requirement as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) a requirement to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural or historic interest; and

(c) a requirement to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects.

(3) The requirements imposed by this subsection in relation to any such proposals as are mentioned in subsection (1) above are, subject to the requirements imposed by subsection (2) above—

(a) a requirement to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;

(b) a requirement to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural or historic interest; and

(c) a requirement to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(4) Subsections (1) to (3) above shall apply so as to impose duties on the Director and any company holding an appointment as a relevant undertaker in relation to any proposal relating to—

(a) the functions of the NRA; or

(b) the functions of an internal drainage board,

as they apply in relation to any proposals relating to the functions of such an undertaker; and for the purposes of this subsection the reference in subsection (2)(a) above to the functions of the undertaker shall have effect as a reference to the functions of the NRA or, as the case may be, of the internal drainage board in question.

(5) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes navigation which is subject to the control of that authority to be obstructed or otherwise interfered with, it shall be the duty of every company holding an appointment as a relevant undertaker to take such steps as are—

(a) reasonably practicable; and

(b) consistent with the purposes of the enactments relating to the functions of the undertaker in question, for securing, so long as that company has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

(6) It shall be the duty of a company holding an appointment as a relevant undertaker, in determining what steps to take in performance of any duty imposed by virtue of subsection (5) above, to take into account the needs of persons who are chronically sick or disabled.

(7) The obligations under this section of a company holding an appointment as a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.

(8) Nothing in this section or the following provisions of this Act shall require recreational facilities made available by a relevant undertaker to be made available free of charge.

(9) References in this section to the functions of a relevant undertaker shall be construed, without prejudice to section 156(7) below, as if those functions included the management, by a company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a relevant undertaker).

(10) In this section "building" includes structure.

Environmental duties with respect to sites of special interest.

4.—(1) Where the Nature Conservancy Council for England or the Countryside Council for Wales are of the opinion that any area of land in England or, as the case may be, in Wales—

(a) is of special interest by reason of its flora, fauna or geological or physiographical features; and

(b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker, that Council shall notify the fact that the land is of special interest for that reason to every relevant undertaker whose works, operations or activities may affect the land.

(2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—

(a) is land in relation to which the matters for the purposes of which section 3 above has effect are of particular importance; and

(b) may at any time be affected by schemes, works, operations or activities of a relevant undertaker, the National Park authority or Broads Authority shall notify the fact that the land is such land, and the reasons why those matters are of particular importance in relation to the land, to every relevant undertaker whose works, operations or activities may affect the land.

(3) Where a relevant undertaker has received a notification under subsection (1) or (2) above with respect to any land, that undertaker shall consult the notifying body before carrying out any works, operations or activities which appear to that undertaker to be likely—

(a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or

(b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.

(4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to the Nature Conservancy Council for England, the Countryside Council for Wales, the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.

(5) The obligations under this section of a relevant undertaker shall be enforceable under section 18 below by the Secretary of State.

(6) In this section—

"the Broads" has the same meaning as in the [1988 c. 4.] Norfolk and Suffolk Broads Act 1988; and "National Park authority" means a National Park Committee or a joint or special planning board for a National Park; and section 3(9) above shall apply, as it applies in relation to that section, for construing (in accordance with section 6 below) any references in this section to a relevant undertaker.

Codes of practice with respect to environmental and recreational duties.

5.—(1) The Secretary of State may by order approve any code of practice issued (whether by him or by another person) for the purpose of—

(a) giving practical guidance to relevant undertakers with respect to any of the matters for the purposes of which sections 3 and 4 above have effect; and

(b) promoting what appear to him to be desirable practices by such undertakers with respect to those matters, and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.

(2) A contravention of a code of practice as for the time being approved under this section shall not of itself constitute a contravention of any requirement imposed by section 3 or 4 above or give rise to any criminal or civil liability; but the Secretary of State and the Minister of Agriculture, Fisheries and Food shall each be under a duty to take into account whether there has been or is likely to be any such contravention in determining when and

how he should exercise his powers in relation to any relevant undertaker by virtue of this Act, any of the other consolidation Acts or the [1989 c. 15.] Water Act 1989.

(3) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The Secretary of State shall not make an order under this section unless he has first consulted—

(a) the NRA;

(b) the Countryside Commission, the Nature Conservancy Council for England and the Countryside Council for Wales;

(c) the Historic Buildings and Monuments Commission for England;

(d) the Sports Council and the Sports Council for Wales; and

(e) such relevant undertakers and other persons as he considers it appropriate to consult.

(5) In this section "the other consolidation Acts" means the [1991 c. 57.] Water Resources Act 1991, the [1991 c. 58.] Statutory Water Companies Act 1991, the [1991 c. 59.] Land Drainage Act 1991 and the [1991 c. 60.] Water Consolidation (Consequential Provisions) Act 1991.

Part III
Appointment and Regulation of Undertakers
I
Appointments

Making of appointments

Appointment of relevant undertakers.

6.—(1) Subject to the following provisions of this Chapter, a company may be appointed—

(a) by the Secretary of State; or

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director, to be the water undertaker or sewerage undertaker for any area of England and Wales.

(2) Without prejudice to the obligation of a company holding an appointment under this Chapter to comply with the conditions of its appointment, the appointment of a company to be the water undertaker or sewerage undertaker for any area shall have the effect, while the appointment remains in force—

(a) of requiring the company to perform any duty imposed by or under any enactment on an undertaker of the relevant description (that is to say, a water undertaker or, as the case may be, sewerage undertaker);

(b) of authorising the company, for the purposes of, or in connection with, the carrying out of any of the functions of an undertaker of the relevant description, to exercise any power conferred by or under any enactment on an undertaker of that description;

(c) of requiring enactments and subordinate legislation authorising or requiring anything to be done in relation to an undertaker of the relevant description to be construed as authorising or requiring that thing to be done in relation to that company; and

(d) of requiring other references in any enactment or subordinate legislation to an undertaker of the relevant description, or to the area of that undertaker, to be construed, so far as necessary for the purposes of, or in connection with, the carrying out by that company of the functions of an undertaker of that description, as references to that company or, as the case may be, to that area.

(3) The appointment of a company to be a relevant undertaker shall be by service on the company of an instrument in writing containing the appointment and describing the area for which it is made.

(4) A single instrument may contain the appointment of a company to be the sewerage undertaker for an area and the appointment of the same company to be the water undertaker for the whole or any part of that area or for an area which includes the whole or any part of that area.

(5) A company shall not be appointed to be a water undertaker unless it is a limited company or a statutory water company and shall not be appointed to be a sewerage undertaker unless it is a limited company.

(6) As soon as practicable after making an appointment under this Chapter, the Secretary of State shall send a copy of the appointment to the Director.

Continuity of appointments, replacement appointments etc.

7.—(1) It shall be the duty of the Secretary of State to secure that such appointments are made under this Chapter as will ensure that for every area of England and Wales there is at all times both—

(a) a company holding an appointment under this Chapter as water undertaker; and
(b) whether or not the same company in relation to the whole or any part of that area, a company holding an appointment as sewerage undertaker.

(2) Subject to the following provisions of this section—

(a) the Secretary of State; and

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, the Director,

shall have power, by notice to a company holding an appointment under this Chapter, to terminate the appointment or to vary the area to which it relates.

(3) The appointment of a company to be a water undertaker or sewerage undertaker shall not be terminated or otherwise cease to relate to or to any part of any area except with effect from the coming into force of such appointments and variations replacing that company as a relevant undertaker as secure either—

(a) that another company becomes the water undertaker or, as the case may be, sewerage undertaker for that area or part or for an area that includes that area or part; or

(b) that two or more companies each become the water undertaker or, as the case may be, sewerage undertaker for one of a number of different areas that together constitute or include that area or part.

(4) An appointment or variation replacing a company as a relevant undertaker shall not be made in relation to the whole or any part of the area to which that company's appointment as

water undertaker or, as the case may be, sewerage undertaker relates except where—

- (a) that company consents to the appointment or variation;
- (b) the appointment or variation relates only to parts of that area none of the premises in which is served by that company; or
- (c) the appointment or variation is made in such circumstances as may be set out for the purposes of this paragraph in the conditions of that company's appointment.

Procedure with respect to appointments and variations.

8.—(1) An application for an appointment or variation replacing a company as a relevant undertaker shall be made in such manner as may be prescribed.

(2) Within fourteen days after making an application under this section, the applicant shall—

- (a) serve notice of the application on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the application relates; and
- (b) publish a copy of the notice in such manner as may be prescribed.

(3) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall give notice—

- (a) stating that he proposes to make the appointment or variation;
- (b) stating the reasons why he proposes to make the appointment or variation; 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 appointment or variation may be made.

(4) A notice under subsection (3) above shall be given—

- (a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for bringing it to the attention of persons likely to be affected by the making of the proposed appointment or variation; and
- (b) by serving a copy of the notice on the existing appointee and on every local authority whose area includes the whole or any part of the area to which the proposed appointment or variation relates.

(5) As soon as practicable after making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall—

- (a) serve a copy of the appointment or variation on the existing appointee; and
- (b) serve notice of the making of the appointment or variation on every local authority whose area includes the whole or any part of the area to which the appointment or variation relates, and as soon as practicable after exercising any power to vary the area to which an appointment under this Chapter relates, the Secretary of State shall send a copy of the variation to the Director.

(6) In this section "the existing appointee", in relation to an appointment or variation replacing a company as a relevant undertaker, means the company which is replaced in relation to the whole or any part of the area to which the appointment or variation relates or, where there is more than one such company, each of them.

Duties affecting making of appointments and variations.

9.—(1) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State or the Director shall consider any representations or objections which have been duly made in pursuance of the notice under section 8(3) above and have not been withdrawn.

(2) Before making an appointment or variation replacing a company as a relevant undertaker, the Secretary of State shall consult the Director.

(3) In determining whether to make an appointment or variation by virtue of section 7(4)(b) above in relation to any part of an area, the Secretary of State or, as the case may be, the Director shall have regard, in particular, to any arrangements made or expenditure incurred by the existing appointee for the purpose of enabling premises in that part of that area to be served by that appointee.

(4) It shall be the duty of the Secretary of State or, as the case may be, of the Director—
(a) in making an appointment or variation replacing a company as a relevant undertaker; and
(b) where he makes such an appointment or variation, in determining what provision is to be made with respect to the fixing by the new appointee of any water or drainage charges, to ensure, so far as may be consistent with his duties under Part I of this Act, that the interests of the members and creditors of the existing appointee are not unfairly prejudiced as respects the terms on which the new appointee could accept transfers of property, rights and liabilities from the existing appointee.

(5) In this section—

"existing appointee", in relation to an appointment or variation replacing a company as a relevant undertaker in relation to any area or part of an area, means the company which is replaced by that appointment or variation;

"new appointee", in relation to such an appointment or variation, means the company which by virtue of the appointment or variation becomes a relevant undertaker for the area or part of an area in question;

"water or drainage charges" means

(a) charges in respect of any services provided in the course of the carrying out of the functions of a water undertaker or sewerage undertaker; or

(b) amounts of any other description which such an undertaker is authorised by or under any enactment to require any person to pay.

Transitional provision with respect to replacement appointments.

10. Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker by an appointment or variation under this Chapter.

Conditions of appointments

Power to impose conditions.

11.—(1) An appointment under this Chapter may include—

(a) such conditions as appear to the Secretary of State or, as the case may be, the Director to

be requisite or expedient having regard to the duties imposed on him by Part I of this Act;
(b) conditions for the purposes of section 7(4)(c) above; and
(c) conditions requiring the rendering to the Secretary of State of a payment on the making of an appointment, or payments while such an appointment is in force, or both, of such amount or amounts as may be determined by or under the conditions.

(2) Conditions may be included by virtue of subsection (1)(a) above in an appointment under this Chapter whether or not they are connected with the supply of water, the provision of sewerage services or the exercise or performance of any power or duty conferred or imposed by or under any enactment on water undertakers or sewerage undertakers.

(3) Conditions included in an appointment under this Chapter may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(4) Any provision included by virtue of subsection (3) above in an appointment under this Chapter shall have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of an appointment.

(5) For the purposes of this Act where the same instrument contains an appointment of the same company to be both a water undertaker and a sewerage undertaker (whether or not for the same area), all the conditions included in that instrument by virtue of this section shall have effect, irrespective of their subject-matter, as conditions of both appointments.

(6) Where an instrument of appointment has been served under subsection (3) of section 6 above on any company, the coming into force of the appointment for the purposes specified in subsection (2) of that section shall not be affected by any contravention of the requirements of this Act with respect to the provision contained by way of conditions of appointment in that instrument.

(7) If the Secretary of State considers it appropriate to do so in consequence of any legal proceedings with respect to any such provision as is mentioned in subsection (6) above, he may by order made by statutory instrument direct that such conditions as may be specified in the order are to be treated as included in the appointment in question until there is an opportunity for the provision to which the proceedings relate to be replaced by virtue of any of the other provisions of this Chapter.

(8) Any sums received by the Secretary of State in consequence of the provisions of any condition of an appointment under this Chapter shall be paid into the Consolidated Fund.

Determinations under conditions of appointment.

12.—(1) Without prejudice to the generality of paragraph (a) of section 11(1) above, conditions included in an appointment by virtue of that paragraph may—

- (a) require the appointed company to comply with any direction given by the Director as to such matters as are specified in the appointment or are of a description so specified; and
- (b) require the appointed company, except in so far as the Director consents to the company's doing or not doing them, not to do or to do such things as are specified in the appointment or are of a description so specified.

(2) Without prejudice as aforesaid, such conditions may provide for the reference to and determination by—

(a) the Secretary of State or the Director; or

(b) on a reference by the Director, the Monopolies and Mergers Commission (in this Act referred to as "the Monopolies Commission"),

of such questions arising under the appointment and of such other matters, including (in the case of references to the Commission) disputes as to determinations by the Director, as are specified in the appointment or are of a description so specified.

(3) Where any question or other matter falls to be determined by the Monopolies Commission in pursuance of a provision contained in an appointment under this Chapter—

(a) it shall be the duty of the Director, on being required to do so by the company holding that appointment, to refer that question or matter to that Commission; and

(b) it shall be the duty of that Commission to determine any question or other matter referred by virtue of paragraph (a) above in accordance with—

(i) any regulations under subsection (4) below; and

(ii) the principles which apply, by virtue of Part I of this Act, in relation to determinations under this Chapter by the Director.

(4) The Secretary of State may by regulations make such provision as he considers appropriate for regulating the procedure to be followed with respect to the reference of any question or other matter to the Monopolies Commission in pursuance of provision contained in an appointment under this Chapter.

(5) Without prejudice to the generality of the power conferred by subsection (4) above, regulations under that subsection may, in relation to any such reference as is mentioned in that subsection, apply (with or without modifications) the provisions of any enactment relating to references to the Monopolies Commission under the following provisions of this Act, the 1973 Act or the 1980 Act.

Modification of appointment conditions

Modification by agreement.

13.—(1) Subject to the following provisions of this section, the Director may modify the conditions of a company's appointment under this Chapter if the company consents to the modifications.

(2) Before making modifications under this section, the Director shall give notice—

(a) stating that he proposes to make the modifications and setting out their effect;

(b) stating the reasons why he 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, and shall consider any representations or objections which are duly made and not withdrawn.

(3) A notice under subsection (2) above shall be given—

(a) by publishing the notice in such manner as the Director 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 the company and on the Secretary of State.

(4) The Director shall not under this section make any modifications which the Secretary of State has, within the time specified in the notice under subsection (2) above, directed the Director not to make.

(5) The Secretary of State shall not give a direction under subsection (4) above in relation to any modification unless—

(a) the modification is a modification of provision contained in the appointment for the purposes of section 7(4)(c) above;

(b) the modification is a modification of a provision of the appointment which relates to the disposal of, or of interests or rights in or over, a company's protected land and is stated in the appointment to be a provision which cannot be modified; or

(c) it appears to the Secretary of State that the modification should be made, if at all, under section 16 below.

Modification references to Monopolies Commission.

14.—(1) The Director may make to the Monopolies 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 out of any function which is a function of any company by virtue of an appointment of that company under this Chapter; 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 company's appointment.

(2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this section by—

(a) adding to the matters specified in the reference; or

(b) excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—

(a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and

(b) any modifications of the conditions of any appointment mentioned in the reference or variation by which, in his opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director shall—

(a) serve a copy of the reference or variation on the company whose appointment is mentioned in the reference or variation; and

(b) publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this section, to give to the Commission—

(a) any information in his possession which relates to matters falling within the scope of the investigation, and which is either—

(i) requested by the Commission for that purpose; or

(ii) information which, in his 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 his power to give, in relation to any such matters; and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.

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

(7) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this section as if—

(a) the functions of the Commission in relation to those references were functions under the 1973 Act;

(b) the expression "merger reference" included a reference under this section;

(c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;

(d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to subsection (2) above; and

(e) paragraph 16(2) of that Schedule were omitted.

(8) For the purposes of references under this section, there shall be not less than eight additional members of the Monopolies Commission appointed from time to time by the Secretary of State; and, if any functions of that Commission in relation to any such reference are performed through a group—

(a) the chairman of that Commission shall select one or more of those additional members to be members of the group; and

(b) the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the 1973 Act shall be reduced by the number of additional members selected.

Reports on modification references.

15.—(1) In making a report on a reference under section 14 above, the Monopolies Commission—

(a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as, in their opinion, is expedient for facilitating a proper understanding of those questions and of their conclusions;

(b) where they conclude 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 they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of a company's appointment under this Chapter, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) Where, on a reference under section 14 above, the Monopolies Commission conclude that a company holding an appointment under this Chapter is a party to an agreement to which the [1976 c. 34.] Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (b) of subsection (1) above shall have effect subject to the provisions of this subsection.

(3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under section 14 above as it applies to reports of the Commission under that Act.

(4) A report of the Monopolies Commission on a reference under section 14 above shall be made to the Director.

(5) Subject to subsection (6) below, the Director—

(a) shall, on receiving such a report, send a copy of it to the company to whose appointment under this Chapter the report relates and to the Secretary of State; and

(b) shall, not less than fourteen days after that copy is received by the Secretary of State, publish another copy of that report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of fourteen days mentioned in paragraph (b) of subsection (5) above, direct the Director to exclude that matter from every copy of the report to be published by virtue of that paragraph; and the Director shall comply with any such direction.

Modification following report.

16.—(1) Where a report of the Monopolies Commission on a reference under section 14 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 conditions of a company's appointment under this Chapter; and
(d) specifies modifications by which those effects could be remedied or prevented,
the Director shall, subject to the following provisions of this section, make such modifications of the conditions of that appointment as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.

(3) Before making modifications under this section, the Director shall give notice—

(a) stating that he proposes to make the modifications and setting out their effect;
(b) stating the reasons why he 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, 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 Director 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; and
(b) by serving a copy of the notice on the company whose appointment it is proposed to modify.

(5) The Director shall not under this section make any modification of any provisions of a company's appointment under this Chapter which—

(a) are contained in that appointment for the purposes of section 7(4)(c) above; or
(b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

Modification by order under other enactments.

17.—(1) Subject to subsection (3) below, where in the circumstances mentioned in subsection (2) below the Secretary of State by order exercises any of the powers specified in—

(a) Parts I and II of Schedule 8 to the 1973 Act; or

(b) section 10(2)(a) of the 1980 Act,

the order may also provide for the modification of the conditions of a company's appointment under this Chapter to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) Subsection (1) above shall have effect where—

(a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on

monopoly reference) and the monopoly situation exists in relation to the carrying out of any of the functions of a relevant undertaker;

(b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were both engaged in carrying out functions of a relevant undertaker; or

(c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the carrying out of any of the functions of a relevant undertaker.

(3) No modification shall be made by virtue of this section of any provisions of a company's appointment under this Chapter which—

(a) are contained in that appointment for the purposes of section 7(4)(c) above; or

(b) being provisions relating to the disposal of, or of interests or rights in or over, a company's protected land, are stated in the appointment to be provisions which cannot be modified.

(4) Expressions used in this section and in the 1973 Act or the 1980 Act have the same meanings in this section as in that Act.

II Enforcement and Insolvency *Enforcement orders*

Orders for securing compliance with certain provisions.

18.—(1) Subject to subsection (2) and sections 19 and 20 below, where in the case of any company holding an appointment under Chapter I of this Part the Secretary of State or the Director is satisfied—

(a) that that company is contravening—

(i) any condition of the company's appointment in relation to which he is the enforcement authority; or

(ii) any statutory or other requirement which is enforceable under this section and in relation to which he is the enforcement authority;

or

(b) that that company has contravened any such condition or requirement and is likely to do so again,

he shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to section 19 below, where in the case of any company holding an appointment under Chapter I of this Part—

(a) it appears to the Secretary of State or the Director as mentioned in paragraph (a) or (b) of subsection (1) above; and

(b) it appears to him that it is requisite that a provisional enforcement order be made, he may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to him requisite for the purpose of securing compliance with the condition or requirement in question.

(3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional enforcement order be made, the Secretary of State or, as the case may be, the

Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other requirement enforceable under this section, is likely to be done, or omitted to be done, before a final enforcement order may be made.

(4) Subject to sections 19 and 20 below, where the Secretary of State or the Director has made a provisional enforcement order, he shall confirm it, with or without modifications, if—

(a) he is satisfied that the company to which the order relates—

(i) is contravening any condition or statutory or other requirement in relation to which he is the enforcement authority; or

(ii) has contravened any such condition or requirement and is likely to do so again;

and

(b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

(5) An enforcement order—

(a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;

(b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and

(c) may be revoked at any time by the enforcement authority who made it.

(6) For the purposes of this section and the following provisions of this Act—

(a) the statutory and other requirements which shall be enforceable under this section in relation to a company holding an appointment under Chapter I of this Part shall be such of the requirements of any enactment or of any subordinate legislation as—

(i) are imposed in consequence of that appointment; and

(ii) are made so enforceable by that enactment or subordinate legislation;

(b) the Director shall be the enforcement authority in relation to the conditions of an appointment under Chapter I of this Part; and

(c) the enforcement authority in relation to each of the statutory and other requirements enforceable under this section shall be the Secretary of State, the Director or either of them, according to whatever provision is made by the enactment or subordinate legislation by which the requirement is made so enforceable.

(7) In this section and the following provisions of this Chapter—

"enforcement order" means a final enforcement order or a provisional enforcement order;

"final enforcement order" means an order under this section other than a provisional enforcement order;

"provisional enforcement order" means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

(8) Where any act or omission constitutes a contravention of a condition of an appointment under Chapter I of this Part or of a statutory or other requirement enforceable under this section, the only remedies for that contravention, apart from those available by virtue of this section, shall be those for which express provision is made by or under any enactment and

those that are available in respect of that act or omission otherwise than by virtue of its constituting such a contravention.

Exceptions to duty to enforce.

19.—(1) Neither the Secretary of State nor the Director shall be required to make an enforcement order in relation to any company, or to confirm a provisional enforcement order so made, if he is satisfied—

- (a) that the contraventions were, or the apprehended contraventions are, of a trivial nature;
- (b) that the company has given, and is complying with, an undertaking to take all such steps as it appears to him for the time being to be appropriate for the company to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
- (c) that the duties imposed on him by Part I of this Act preclude the making or, as the case may be, the confirmation of the order.

(2) The requirement to comply with an undertaking given for the purposes of subsection (1)(b) above shall be treated as a statutory requirement enforceable under section 18 above—

- (a) by the Secretary of State; or
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.

(3) Where the Secretary of State or the Director, having notified a company that he is considering the making in relation to the company of an enforcement order or the confirmation of a provisional enforcement order so made, is satisfied as mentioned in paragraph (a), (b) or (c) of subsection (1) above, he shall—

- (a) serve notice that he is so satisfied on the company;
- (b) publish a copy of the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (c) in a case where the Secretary of State is satisfied as mentioned in the said paragraph (b), serve a copy of the notice and of the undertaking given for the purposes of that paragraph on the Director.

(4) The requirements of subsection (3) above shall not apply, in the case of any proposed order or confirmation in respect of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Procedure for enforcement orders. d1>

20.—(1) Before making a final enforcement order or confirming a provisional enforcement order, the Secretary of State or the Director shall give notice—

- (a) stating that he proposes to make or confirm the order and setting out the effect of the order;
- (b) setting out—
 - (i) the condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;

(ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and

(iii) the other facts which, in his opinion, justify the making or confirmation of the order; 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 order or proposed confirmation may be made, and shall consider any representations or objections which are duly made and not withdrawn.

(2) A notice under subsection (1) above shall be given—

(a) by publishing the notice in such manner as the Secretary of State or, as the case may be, the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.

(3) Neither the Secretary of State nor the Director shall make a final enforcement order with modifications, or confirm a provisional enforcement order with modifications, except—

(a) with the consent to the modifications of the company to which the order relates; or

(b) after complying with the requirements of subsection (4) below.

(4) The requirements mentioned in subsection (3) above are that the Secretary of State or, as the case may be, the Director shall—

(a) serve on the company to which the order relates such notice as appears to him to be requisite of his proposal to make or confirm the order with modifications;

(b) in that notice specify the period (not being less than twenty-eight days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and

(c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making an enforcement order or confirming a provisional enforcement order, the Secretary of State or, as the case may be, the Director shall—

(a) serve a copy of the order on the company to which the order relates and, where this subsection applies in the case of an order made or confirmed by Secretary of State, on the Director; and

(b) publish such a copy in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.

(6) Before revoking an enforcement order, other than an unconfirmed provisional order, the Secretary of State or the Director shall give notice—

(a) stating that he proposes to revoke the order and setting out its effect; and

(b) 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 revocation may be made, and shall consider any representations or objections which are duly made and not withdrawn.

(7) If, after giving a notice under subsection (6) above, the Secretary of State or the Director decides not to revoke the order to which the notice relates, he shall give notice of that decision.

(8) A notice under subsection (6) or (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 Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice on the company to which the order relates and, where the notice is given by the Secretary of State, on the Director.

(9) The requirements of the preceding provisions of this section shall not apply, in the case of any order in respect of a contravention of a direction under section 208 below, to the extent that the Secretary of State directs that they should not be complied with in the interests of national security.

Validity of enforcement orders.

21.—(1) If the company to which an enforcement order relates is aggrieved by the order and desires to question its validity on the ground—

(a) that its making or confirmation was not within the powers of section 18 above; or

(b) that any of the requirements of section 20 above have not been complied with in relation to it, the company may, within forty-two days from the date of service on it of a copy of the order, make an application to the High Court under this section.

(2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the company have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this section, the validity of an enforcement order shall not be questioned in any legal proceedings whatsoever.

Effect of enforcement order.

22.—(1) The obligation to comply with an enforcement order shall be a duty owed to any person who may be affected by a contravention of the order.

(2) Where a duty is owed by virtue of subsection (1) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(3) In any proceedings brought against any company in pursuance of subsection (2) above, other than proceedings in respect of so much of a contravention of any order as consists in a breach of the duty imposed by virtue of section 68(1)(a) below, it shall be a defence for the company to show that it took all reasonable steps and exercised all due diligence to avoid contravening the order.

(4) Without prejudice to any right which any person may have by virtue of subsection (1) above to bring civil proceedings in respect of any contravention or apprehended contravention of an enforcement order, compliance with any such order shall be enforceable by civil proceedings by the relevant enforcement authority for an injunction or for any other appropriate relief.

(5) In subsection (4) above "the relevant enforcement authority" , in relation to any enforcement order, means the Secretary of State or the Director or either of them according to who is the enforcement authority in relation to the condition or requirement compliance with which was to be secured by the order.

Special administration orders

Meaning and effect of special administration order.

23.—(1) A special administration order is an order of the High Court made in accordance with section 24 or 25 below in relation to a company holding an appointment under Chapter I of this Part and directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed, by a person appointed by the High Court—

(a) for the achievement of the purposes of such an order; and
(b) in a manner which protects the respective interests of the members and creditors of the company.

(2) The purposes of a special administration order made in relation to any company shall be—
(a) the transfer to another company, or (as respects different parts of the area to which the company's appointment relates, or different parts of its undertaking) to two or more different companies, as a going concern, of so much of the company's undertaking as it is necessary to transfer in order to ensure that the functions which have been vested in the company by virtue of its appointment may be properly carried out; and

(b) the carrying out of those functions pending the making of the transfer and the vesting of those functions in the other company or companies (whether by virtue of the transfer or of an appointment or variation which replaces the former company as a relevant undertaker).

(3) Schedule 3 to this Act shall have effect for applying provisions of the [1986 c. 45.] Insolvency Act 1986 where a special administration order is made.

(4) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which a company is replaced by another as a relevant undertaker, without an appointment or variation under Chapter I of this Part, in pursuance of a special administration order.

(5) In this section "business" and "property" have the same meanings as in the [1986 c. 45.] Insolvency Act 1986.

Special administration orders made on special petitions.

24.—(1) If, on an application made to the High Court by petition presented—

(a) by the Secretary of State; or

(b) with the consent of the Secretary of State, by the Director,

that Court is satisfied in relation to any company which holds an appointment under Chapter I of this Part that any one or more of the grounds specified in subsection (2) below is satisfied in relation to that company, that Court may make a special administration order in relation to that company.

(2) The grounds mentioned in subsection (1) above are, in relation to any company—

- (a) that there has been, is or is likely to be such a contravention by the company of any principal duty, not being a contravention in respect of which a notice has been served under subsection (3) of section 19 above, as is serious enough to make it inappropriate for the company to continue to hold its appointment;
- (b) that there has been, is or is likely to be such a contravention by the company of the provisions of any enforcement order which—
 - (i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) above; and
 - (ii) if it is a provisional enforcement order, has been confirmed, as is serious enough to make it inappropriate for the company to continue to hold its appointment;
- (c) that the company is or is likely to be unable to pay its debts;
- (d) that, in a case in which the Secretary of State has certified that it would be appropriate, but for section 25 below, for him to petition for the winding up of the company under section 440 of the [1985 c. 6.] Companies Act 1985 (petition by the Secretary of State following inspectors' report etc.), it would be just and equitable, as mentioned in that section, for the company to be wound up if it did not hold an appointment under Chapter I of this Part; or
- (e) that the company is unable or unwilling adequately to participate in arrangements certified by the Secretary of State or the Director to be necessary by reason of, or in connection with, a proposal for the making by virtue of section 7(4)(c) above of any appointment or variation replacing a company as a relevant undertaker.

(3) Notice of any petition under this section for a special administration order shall be given forthwith to such persons and in such manner as may be prescribed by rules made under section 411 of the [1986 c. 45.] Insolvency Act 1986 ("the 1986 Act"); and no such petition shall be withdrawn except with the leave of the High Court.

(4) Subsections (4) and (5) of section 9 of the 1986 Act (powers on application for administration order) shall apply on the hearing of the petition for a special administration order in relation to any company as they apply on the hearing of a petition for an administration order.

(5) Subsections (1), (2) and (4) of section 10 of the 1986 Act (effect of petition) shall apply in the case of a petition for a special administration order in relation to any company as if—

- (a) the reference in subsection (1) to an administration order were a reference to a special administration order;
- (b) paragraph (b) of that subsection did require the leave of the court for the taking of any of the steps mentioned in paragraphs (b) and (c) of subsection (2) (appointment of, and exercise of functions by, administrative receiver); and
- (c) the reference in paragraph (c) of subsection (1) to proceedings included a reference to any proceedings under or for the purposes of section 18 above.

(6) For the purposes of this section a company is unable to pay its debts if—

- (a) it is a limited company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
- (b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding up of unregistered companies).

(7) In this section "principal duty" , in relation to a company, means a requirement imposed on the company by section 37 or 94 below.

Power to make special administration order on winding-up petition.

25. On an application made to any court for the winding up of a company which holds an appointment under Chapter I of this Part—

(a) the court shall not make a winding-up order in relation to the company; but

(b) if the court is satisfied that it would be appropriate to make such an order if the company were not a company holding such an appointment, it shall, instead, make a special administration order in relation to the company.

Restrictions on voluntary winding up and insolvency proceedings

Restrictions on voluntary winding up and insolvency proceedings.

26.—(1) Where a company holds an appointment under Chapter I of this Part—

(a) the company shall not be wound up voluntarily;

(b) no administration order shall be made in relation to the company under Part II of the [1986 c. 45.] Insolvency Act 1986; and

(c) no step shall be taken by any person to enforce any security over the company's property except where that person has served fourteen days' notice of his intention to take that step on the Secretary of State and on the Director.

(2) In this section "security" and "property" have the same meanings as in Parts I to VII of the [1986 c. 45.] Insolvency Act 1986.

III Protection of Customers etc. *General provisions*

General duty of Director to keep matters under review.

27.—(1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so, to keep under review the carrying on both in England and Wales and elsewhere of activities connected with the matters in relation to which water undertakers or sewerage undertakers carry out functions.

(2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time to do so, to collect information with respect to—

(a) the carrying out by companies appointed under Chapter I of this Part of the functions of relevant undertakers; or

(b) any such company,

with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which any power or duty is conferred or imposed on him by or under any enactment.

(3) The Secretary of State may give general directions indicating—

(a) considerations to which the Director should have particular regard in determining the

order of priority in which matters are to be brought under review in performing his duty under subsection (1) or (2) above; and

(b) considerations to which, in cases where it appears to the Director that any of his powers under Parts II to V and VII of this Act are exercisable, he should have particular regard in determining whether to exercise those powers; and it shall be the duty of the Director to comply with any such directions.

(4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or the Director General of Fair Trading to do so, to give information, advice and assistance to the Secretary of State or that Director with respect to any matter relating to—

(a) the functions of either description of relevant undertaker; or

(b) the carrying out of any such functions by a company holding an appointment under Chapter I of this Part.

Customer service committees.

28.—(1) Every company holding an appointment under Chapter I of this Part shall be allocated by the Director to a committee established and maintained by him for the purpose, in relation to such companies as may be allocated to it, of carrying out—

(a) the functions assigned by this Act to such a committee; and

(b) such other functions as the committees maintained under this section may be required to carry out by the Director.

(2) The committees maintained under this section shall be known as customer service committees.

(3) There shall not at any time be more than ten customer service committees, but it shall be the duty of the Director so to exercise his powers under this section to establish and maintain customer service committees and to allocate companies to those committees as to secure that at all times—

(a) such customer service committees are maintained; and

(b) such allocations under subsection (1) above are in force, as he considers appropriate for ensuring that the interests of the customers and potential customers of the companies for the time being holding appointments under Chapter I of this Part are effectively represented.

(4) A customer service committee shall consist of—

(a) a chairman appointed by the Director after consultation with the Secretary of State; and

(b) such number (not less than ten nor more than twenty) of other members appointed by the Director as the Director may determine.

(5) In appointing persons to be members of a customer service committee the Director shall have regard to—

(a) the desirability of the persons appointed being persons who have experience of, and have shown capacity in, some matter relevant to—

(i) the functions of a water undertaker or sewerage undertaker; or

(ii) the carrying out of those functions in relation to any area by a company which the Director has allocated, or is proposing to allocate, to that committee;

and

(b) the desirability of—

- (i) the committee including one or more persons with experience of work among, and the special needs of, disabled persons; and
- (ii) persons appointed by virtue of this paragraph including disabled persons.

(6) An appointment of a person to hold office as the chairman of a customer service committee shall be for a term not exceeding four years.

(7) Subject to subsection (6) above, the chairman and other members of a customer service committee shall hold and vacate office in accordance with the terms of their appointments and, notwithstanding that subsection, shall on ceasing to hold office be eligible for re-appointment.

(8) The provisions of Schedule 4 to this Act shall have effect with respect to customer service committees.

Duties of customer service committees.

29.—(1) It shall be the duty of a customer service committee—

- (a) to keep under review all matters appearing to the committee to affect the interests of the persons who are customers or potential customers of the companies allocated to the committee;
- (b) to consult each company so allocated about such of those matters as appear to affect the interests of the customers or potential customers of that company; and
- (c) to make to a company so allocated all such representations about any such matter as the committee considers appropriate.

(2) Subject to subsection (3) below, it shall be the duty of a customer service committee to investigate any complaint which—

- (a) is made to the committee by any person who is a customer or potential customer of a company allocated to the committee or is referred to the committee by the Director under section 30 below;
- (b) does not appear to the committee to be vexatious or frivolous; and
- (c) relates to the carrying out by that company of any of the functions of a relevant undertaker.

(3) It shall be the duty of a customer service committee to refer to the Director every complaint which is made to the committee by any person in relation to a company allocated to the committee and consists in or amounts to—

- (a) an assertion that the company is contravening or has contravened any condition of the company's appointment under Chapter I of this Part or any statutory or other requirement enforceable under section 18 above; or
- (b) a complaint which the Director would be required to investigate under section 181 below.

(4) It shall be the duty of a customer service committee, where the committee considers it appropriate to do so in connection with any such complaint as is mentioned in subsection (2) above, to make representations on behalf of the complainant to the company in question about any matter—

(a) to which the complaint relates; or
(b) which appears to the committee to be relevant to the subject-matter of the complaint;
and it shall be the duty of a customer service committee to refer to the Director or, as the case may be, back to the Director any such complaint as is so mentioned which the committee is unable to resolve.

(5) The only remedy for a breach by a customer service committee of a duty imposed on it by this section shall be the making of such a complaint to the Director as the Director is required to consider under section 30(3)(c) below.

(6) It shall be the duty of the Director to make such arrangements as he considers appropriate for facilitating the provision by one customer service committee to another of any such information as that other committee may require for any purpose relating to the carrying out of its functions.

Duties of Director with respect to complaints

30.—(1) Where a complaint is made to the Director by a customer or potential customer of a company allocated to a customer service committee and the complaint does not consist in or amount to—

(a) an assertion that the company is contravening or has contravened any condition of the company's appointment under Chapter I of this Part or any statutory or other requirement enforceable under section 18 above; or

(b) a complaint which the Director is required to investigate under section 181 below,
it shall be the duty of the Director to consider whether the complaint should be referred to that committee, instead of being dealt with by the Director himself.

(2) Where a complaint which does consist in or amount to such an assertion as is mentioned in subsection (2)(a) above—

(a) is made to the Director by a customer or potential customer of any company allocated to a customer service committee; or

(b) is referred to him by such a committee, it shall be the duty of the Director to consider whether the complaint should be referred by him to the Secretary of State.

(3) It shall be the duty of the Director to consider the following complaints, that is to say—

(a) any complaint to which the duty imposed by subsection (2) above applies and which is not referred by the Director to the Secretary of State;

(b) any complaint which is referred to the Director under section 29(4) above; and

(c) any complaint made to the Director by a customer or potential customer of a company allocated to a customer service committee that the committee has failed to perform any duty imposed on it by section 29(1) to (4) above.

(4) It shall be the duty of the Director to take such steps in consequence of his consideration of any matter in pursuance of this section (including, in a case falling within subsection (3)(b) or (c) above, any step which could have been taken by the committee itself) as he considers appropriate.

Provisions with respect to competition

Functions of Director with respect to competition.

31.—(1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the 1973 Act so far as relating to courses of conduct which are or may be detrimental to the interests of persons who are consumers in relation to—

(a) the supply of water by water undertakers; or

(b) the provision of sewerage services by sewerage undertakers;

and this duty shall apply whether those interests are economic or interests in respect of health, safety or other matters.

(2) The Director shall continue to be entitled, concurrently with the Director General of Fair Trading, to exercise—

(a) the functions of that Director under sections 44 and 45 of the 1973 Act; and

(b) the functions of that Director under sections 50, 52, 53, 86 and 88 of that Act, so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the supply of water or the provision of sewerage services.

(3) The Director shall continue to be entitled, concurrently with the Director General of Fair Trading, to exercise the functions of that Director under sections 2 to 10 and 16 of the 1980 Act so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the supply of water or securing a supply of water or with the provision or securing of sewerage services.

(4) So far as necessary for the purposes of or in connection with the provisions of subsections (1) to (3) above, the references to the Director General of Fair Trading in—

(a) Parts III and IV of the 1973 Act;

(b) sections 86, 88 and 133 of the 1973 Act; and

(c) sections 2 to 10, 16 and 19 of the 1980 Act,

shall be construed as if they were or, as the case may require, as if they included references to the Director.

(5) Before either Director first exercises in relation to any matter functions mentioned in paragraph (a) or in paragraph (b) of subsection (2) above or in subsection (3) above, he shall consult the other Director.

(6) Neither Director shall exercise in relation to any matter any functions mentioned in paragraph (a) or in paragraph (b) of subsection (2) above or in subsection (3) above if any of the functions mentioned in that paragraph or, as the case may be, in subsection (3) above have already been exercised in relation to that matter by the other Director.

(7) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of subsection (2) or (3) above, to give to the Commission—

(a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose

or is information which in his 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 his power to give, in relation to any such matters; and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

(8) If any question arises as to whether subsection (2) or (3) above applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

(a) Part IV or section 86 or 88 of the 1973 Act; or

(b) sections 2 to 10 of the 1980 Act, by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.

(9) Expressions used in the 1973 Act or the 1980 Act and in this section have the same meanings in this section as in that Act.

Duty to refer merger of water or sewerage undertakings.

32.—(1) Subject to the following provisions of this section and to section 33 below, it shall be the duty of the Secretary of State to make a merger reference to the Monopolies Commission if it appears to him that it is or may be the fact—

(a) that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises; or

(b) that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) above.

(2) The Secretary of State shall not make a merger reference under this section in respect of any actual or prospective merger of two or more water enterprises if it appears to him that the take over from which the merger has resulted or, as the case may be, would result was initiated before 9 a.m. on 11th January 1989.

(3) For the purposes of subsection (2) above a merger of two or more enterprises results from a take over initiated before 9 a.m. on 11th January 1989 if—

(a) the Secretary of State or the Director General of Fair Trading was given notice before that time on that date of the material facts about the proposed arrangements or transactions resulting in the merger; or

(b) the merger results exclusively from the acceptance of offers to acquire shares in a body corporate and those offers—

(i) were all made before that time on that date; or

(ii) in so far as they were not so made, consist in offers made, by the same person and in respect of the same shares, in substitution for offers made before that time on that date.

Exclusion of small mergers from duty to make merger reference.

33.—(1) The Secretary of State shall not make a merger reference under section 32 above in respect of any actual or prospective merger of two or more water enterprises if it appears to him—

(a) that the value of the assets taken over does not exceed or, as the case may be, would not exceed the amount for the time being specified in section 64(1)(b) of the 1973 Act

(condition of merger reference relating to amount of assets taken over); or
(b) that the only water enterprises already belonging to the person making the take over are enterprises each of which has assets the value of which does not exceed or, as the case may be, would not exceed that amount.

(2) In relation to a merger of two or more water enterprises—

(a) the value of the assets taken over shall, for the purposes of subsection (1) above, be determined in accordance with section 67 of the 1973 Act by reference only to assets employed in or appropriated to a water enterprise; and

(b) the value of the assets of a water enterprise belonging to the person making the take over shall be taken for those purposes to be the value of such assets employed in or appropriated to that enterprise as by virtue of the exceptions in paragraph (a) of subsection (2) of that section are disregarded in determining the value of the assets taken over;

and paragraph (b) of that subsection shall apply for determining the value of the assets referred to in paragraph (b) above as it applies in relation to the assets taken over.

(3) For the purposes of this section and of any determination in accordance with this section—

(a) the assets treated as employed in or appropriated to a water enterprise carried on by a company holding an appointment under Chapter I of this Part shall include all the assets for the time being of that company;

(b) every water enterprise any of whose assets fall to be disregarded as mentioned in subsection (2)(b) above shall be treated as belonging to the person making the take over;

(c) the enterprises mentioned in paragraph (b) above shall be treated as separate enterprises in so far as they are carried on by different companies holding appointments under Chapter I of this Part; and

(d) subsections (3) and (4) of section 67 of the 1973 Act (assets treated as appropriated to an enterprise and mergers over a period) shall apply as they apply for the purposes of, and of any determination in accordance with, subsection (2) of that section.

(4) If the Secretary of State considers that it is appropriate—

(a) for subsection (1) above to have effect with a reference in paragraph (a) to a different amount; or

(b) for the condition set out in that paragraph to be modified in any other respect, he may, in relation to mergers after the coming into force of the regulations, by regulations make such modifications of that paragraph and, for that purpose, of the other provisions of this section as may be prescribed.

References with respect to water enterprise mergers.

34.—(1) Subject to subsections (2) to (4) below, the 1973 Act shall have effect in relation to any reference under section 32 above as if—

(a) any such merger of two or more water enterprises as is required to be the subject of such a reference were a merger situation qualifying for investigation; and

(b) a reference under that section were made under section 64 of that Act or, as the case may be, under section 75 of that Act (references in anticipation of a merger).

(2) Nothing in subsection (1) above shall have the effect in relation to any reference under section 32 above of applying—

- (a) so much of Part V of the 1973 Act as requires the Monopolies Commission to consider any of the matters set out in subsection (1) of section 64 of that Act; or
- (b) the provisions of sections 69(2) to (4) and 75(3) of that Act (power to restrict matters referred).

(3) In determining on a reference under section 32 above whether any matter operates, or may be expected to operate, against the public interest the Monopolies Commission—

(a) shall have regard to the desirability of giving effect to the principle that the number of water enterprises which are under independent control should not be reduced so as to prejudice the Director's ability, in carrying out his functions by virtue of this Act, to make comparisons between different such water enterprises; and

(b) shall have regard to the desirability of achieving any other purpose so far only as they are satisfied—

(i) that that other purpose can be achieved in a manner that does not conflict with that principle; or

(ii) that the achievement of that other purpose is of substantially greater significance in relation to the public interest than that principle and cannot be brought about except in a manner that conflicts with that principle.

(4) No order shall be made under Part V of the 1973 Act in consequence of any merger reference made under section 32 above in respect of an actual merger unless the reference was made within the period of six months beginning with whichever is the later of—

(a) the day on which the merger took place; and

(b) the day on which the material facts about the transactions which resulted in the merger first came to the notice of the Secretary of State or the Director General of Fair Trading or were made public within the meaning of section 64 of the 1973 Act; and if on such a reference the Monopolies Commission are satisfied that the reference was not made within that period their report on the reference shall state that fact and nothing else.

Construction of merger provisions.

35.—(1) In this Chapter-

"enterprise" has the meaning given for the purposes of sections 64 to 77 of the 1973 Act by section 63(2) of that Act; and

"water enterprise" means an enterprise carried on by a relevant undertaker.

(2) References in this Chapter, in relation to any two or more enterprises, to the merger of those enterprises are references to those enterprises ceasing, within the meaning of Part V of the 1973 Act, to be distinct enterprises; and sections 66 and 66A of that Act (time at which enterprises cease to be distinct) shall have effect for the purposes of this Chapter as they have effect for the purposes of that Part.

(3) The reference in section 34(3) above to the number of water enterprises under independent control is a reference to the number of water enterprises there would be if two or more water enterprises counted as one enterprise wherever they would be treated for the purposes of Part V of the 1973 Act as having ceased to be distinct enterprises.

(4) Nothing in sections 32 to 34 above shall prejudice any power of the Secretary of State, in a case in which he is not required to make a reference under section 32 above, to make a merger reference under Part V of the 1973 Act in respect of any actual or prospective merger of two or more water enterprises.

IV Interpretation of Part II

Interpretation of Part II.

36.—(1) In this Part—

"the 1973 Act" means the [1973 c. 41.] Fair Trading Act 1973; and

"the 1980 Act" means the [1980 c. 21.] Competition Act 1980.

(2) References in this Part to an appointment or variation replacing a company as a relevant undertaker are references to the following, that is to say—

(a) the appointment of a company to be the water undertaker or sewerage undertaker for any area which is or includes the whole or any part of any area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker; or

(b) a variation by virtue of which the area for which a company holds an appointment under Chapter I of this Part is modified so as to include the whole or any part of an area for which another company already holds an appointment as water undertaker or, as the case may be, sewerage undertaker.

(3) For the purposes of this Part premises in a part of an area are served by a company holding an appointment under Chapter I of this Part—

(a) in relation to an appointment or variation by virtue of which that company would be replaced as the water undertaker for that part of that area, if those premises—

(i) are supplied with water by means of a connection with a distribution main of that company; or

(ii) consist in a building or part of a building which is situated within thirty metres of such a main; and

(b) in relation to an appointment or variation by virtue of which that company would be replaced as the sewerage undertaker for that part of that area, if those premises—

(i) are drained by means of a relevant sewer; or

(ii) consist in a building or part of a building which is situated within thirty metres of such a sewer, not being a storm-water overflow sewer.

(4) In this section—

"distribution main" means a water main that is not a trunk main; and

"relevant sewer", in relation to any appointment or variation which would replace a company as a sewerage undertaker, means any of the following, that is to say—

(a) a public sewer vested in that company;

(b) a sewer in relation to which that company has made a declaration of vesting under section 102 below which has not yet taken effect;

(c) a drain or sewer in relation to which that company has entered into an agreement under section 104 below.

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