
DRAFT STATUTORY INSTRUMENTS

2016 No. 0000

WATER INDUSTRY, ENGLAND AND WALES

The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016

Made - - - - *****

Coming into force in accordance with article 1(2)

The Secretary of State, in exercise of the powers conferred by sections 42(1), (2), (3) and (5), 43(1)(b), (d), (e) and (g), (3)(a), (7) and (8), 44(1)(a), (3)(a) and (5)(a), 45, 46(3), (5), (7) and (8), 47(1), (2) and (3), 49, 51(1), (3) and (5) and 53(2) of the Water Act 2014^(a), makes these Regulations.

The Secretary of State has, in accordance with section 53(1) of the Water Act 2014, consulted—

- (a) the Welsh Ministers;
- (b) the WSRA;
- (c) the CMA;
- (d) the Consumer Council for Water;
- (e) relevant undertakers whose areas are wholly or mainly in England;
- (f) old water supply licensees; and
- (g) persons whom the Secretary of State considers to represent the interests of investors in the water industry.

In accordance with section 53(3) of the Water Act 2014, a draft of this instrument has been laid before and approved by resolution of each House of Parliament.

PART 1

Citation, commencement and interpretation etc.

Citation and commencement

1.—(1) These Regulations may be cited as the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

(2) These Regulations come into force on 1st October 2016.

Interpretation

2.—(1) In these Regulations—

“the 1991 Act” means the Water Industry Act 1991(a);

“the Authority” means the Water Services Regulation Authority;

“acquiring licensee” has the meaning given by regulation 6;

“eligible sewerage licensee” means a sewerage licensee whose name appears in the relevant list of sewerage licensees maintained under regulation 56;

“eligible water supply licensee” means a water supply licensee whose name appears in the relevant list of eligible water supply licensees maintained under regulation 41;

“exit application” means an application under regulation 4;

“exit date” has the meaning given by regulation 8;

“sewerage system”, in relation to a sewerage undertaker, has the meaning given by section 17BA(7) of the 1991 Act(b);

“supply system”, in relation to a water undertaker, has the meaning given by section 17B(4A) of the 1991 Act(c);

“transferred premises” has the meaning given by regulation 7;

“transferred customer”, in relation to an acquiring licensee, means a customer whose premises are transferred premises in relation to the licensee.

(2) For the purposes of these Regulations—

(a) premises which are outside the area of a water undertaker that is withdrawing, or has withdrawn, from the non-household retail market are to be treated as being within the retail exit area if they are supplied with water using the undertaker’s supply system,

(b) premises which are within the area of a water undertaker that is withdrawing, or has withdrawn, from the non-household retail market are to be treated as being outside the retail exit area if they are supplied with water using another undertaker’s supply system, and

(c) any pipes of a water undertaker which are used for the purpose of supplying premises as mentioned in sub-paragraph (a) or (b) are to be treated as being part of that undertaker’s supply system (if they would not otherwise be part of it).

(3) For the purposes of these Regulations—

(a) premises which are outside the area of a sewerage undertaker that is withdrawing, or has withdrawn, from the non-household retail market are to be treated as being within the retail exit area if they are provided with sewerage services using the undertaker’s sewerage system,

(b) premises which are within the area of a sewerage undertaker that is withdrawing, or has withdrawn, from the non-household retail market are to be treated as being outside the retail exit area if they are supplied with sewerage services using another undertaker’s sewerage system, and

(c) any sewers or drains of a sewerage undertaker which are used for the purpose of serving premises as mentioned in sub-paragraph (a) or (b) are to be treated as being part of that undertaker’s sewerage system (if they would not otherwise be part of it).

(4) Except in so far as the context otherwise requires, expressions used in these Regulations have the same meaning as in the 1991 Act.

(a) 1991 c. 56.

(b) Section 17BA(7) is prospectively substituted by section 4(1) of the Water Act 2014 (c. 21) from a date to be appointed.

(c) Section 17B(4A) is prospectively substituted by section 2(2) of the Water Act 2014 from a date to be appointed.

The non-household retail market

3.—(1) The function of supplying water to non-household premises is specified for the purposes of section 42(4)(a) of the Water Act 2014 (meaning of references to a water undertaker withdrawing from the non-household retail market).

(2) The function of providing sewerage services to non-household premises is specified for the purposes of section 42(4)(b) of the Water Act 2014 (meaning of references to a sewerage undertaker withdrawing from the non-household retail market).

PART 2

Exit applications

Making and content of exit applications

Power to make an exit application

4.—(1) A relevant undertaker whose area is wholly or mainly in England may apply to the Secretary of State for permission to withdraw from the non-household retail market in relation to that area.

(2) A company that is both a water undertaker for an area wholly or mainly in England and a sewerage undertaker for an area wholly or mainly in England may make an application only if it relates to the undertaker's functions in both those capacities.

Exit application to explain reasons for wanting to exit

5. An exit application must explain the relevant undertaker's reasons for wanting to withdraw from the non-household retail market.

Exit application to identify acquiring licensees

6.—(1) An exit application must specify the eligible licensee or licensees to which the relevant undertaker proposes to transfer a part of its undertaking.

(2) An eligible licensee may be specified in an exit application only if the licensee consents in writing.

(3) An exit application must be accompanied by a copy of that consent.

(4) An eligible licensee may be specified in an exit application even if it is a company associated with the undertaker.

(5) In these Regulations "acquiring licensee" means an eligible licensee specified in an exit application.

Exit application to identify customers' premises

7.—(1) An exit application must identify the premises that are to be supplied with water or provided with sewerage services by an acquiring licensee instead of by the relevant undertaker.

(2) If there is more than one acquiring licensee, the exit application must identify which premises are to be supplied with water or provided with sewerage services by which licensee.

(3) The premises must be identified in a way that will catch all premises which are supplied with water or provided with sewerage services by the relevant undertaker immediately before the exit date but which the undertaker will be prohibited by regulation 20 from supplying with water or providing with sewerage services on and after the exit date.

(4) In paragraph (3) the reference to premises which are supplied with water or provided with sewerage services by the relevant undertaker includes all premises in respect of which a person is liable to pay charges to the undertaker for the supply of water or provision of sewerage services.

(5) If the relevant undertaker supplies water and provides sewerage services to the same premises, a single acquiring licensee must be identified under paragraph (2) in relation to the supply of water and the provision of sewerage services to those premises.

(6) Premises may be identified in an exit application by specifying or describing them.

(7) In these Regulations “transferred premises”, in relation to an acquiring licensee, means premises identified in an exit application as premises to be supplied with water or provided with sewerage services by the licensee.

Exit application to specify an exit date

8.—(1) An exit application must specify the date on which the relevant undertaker proposes to withdraw from the non-household retail market in relation to its area.

(2) The exit date must not be before the end of the period of 5 months beginning with the date of the application, unless the Secretary of State has agreed to an earlier exit date.

(3) In these Regulations “exit date”, in relation to a relevant undertaker who has made an exit application, means—

- (a) the date specified in the exit application, or
- (b) if that date is changed under regulation 13, the date most recently notified to the Secretary of State under that regulation.

Notice of exit application and power to require further information

Notice of exit application

9.—(1) Where a relevant undertaker makes an exit application, it must publish notice of the application on its website.

(2) The relevant undertaker must also give notice of the application to—

- (a) the Authority, and
- (b) the Consumer Council for Water.

(3) A notice under paragraph (1) or (2) must specify—

- (a) the date of the exit application,
- (b) the name of the acquiring licensee or licensees, and
- (c) the exit date.

(4) A relevant undertaker that has made an exit application must comply with paragraphs (1) and (2) by the end of the period of 7 days beginning with the date of the application.

(5) A notice published on the relevant undertaker’s website under paragraph (1) must not be removed until—

- (a) the exit date has passed,
- (b) the application is withdrawn under regulation 14, or
- (c) the Secretary of State is notified under regulation 15 that the relevant undertaker or an acquiring licensee no longer wishes to proceed.

(6) A duty imposed on a relevant undertaker by this regulation is enforceable under section 18 of the 1991 Act(a).

(a) Section 18 was amended by section 101(1) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by section 56 of, and paragraph 26 of Schedule 7 to, the Water Act 2014 (c.21) from a date to be appointed.

Power to require further information

10. The Secretary of State may require a relevant undertaker that has made an exit application to provide such further information as may be required in order to determine the application.

Determination of applications and conditions

Determination of application

11.—(1) The Secretary of State must determine an exit application by granting or refusing the relevant undertaker permission to withdraw from the non-household retail market in accordance with the application.

(2) The Secretary of State must grant permission unless—

- (a) it would be contrary to the interests of the public or a section of the public to grant permission, or
- (b) the relevant undertaker has failed to comply with regulation 9 and the Secretary of State considers it appropriate to refuse permission because of that failure.

(3) When granting permission, the Secretary of State—

- (a) must impose the customer notification condition set out in regulation 12, and
- (b) may impose other conditions.

(4) The conditions that may be imposed include—

- (a) a condition requiring the relevant undertaker to give consent to modifications of the undertaker's conditions of appointment;
- (b) a condition requiring an acquiring licensee to give consent to modifications of its water supply licence or sewerage licence;
- (c) a condition requiring the relevant undertaker to provide proof, before the exit date, that other conditions have been met.

(5) The Secretary of State need not determine an exit application until the relevant undertaker has complied with any requirement to provide further information under regulation 10.

Customer notification condition for relevant undertakers

12.—(1) This regulation sets out the customer notification condition for the purposes of regulation 11(3)(a).

(2) The customer notification condition is a condition requiring the relevant undertaker to take reasonable steps to notify each affected customer of its intention to withdraw from the non-household retail market.

(3) The notice must—

- (a) explain in general terms what is happening to the supply of water or the provision of sewerage services to the customer's premises and why;
- (b) give an overview of the terms and conditions that will apply in relation to the customer following the exit date and how to obtain further information;
- (c) give the name and contact details of the acquiring licensee in relation to the customer's premises;
- (d) explain the effect of regulation 17 on any outstanding complaints against the relevant undertaker;
- (e) give the customer information about how to switch supplier and where to find information about other potential suppliers.

(4) The notice must be given—

- (a) in the case of a person who is a customer immediately before the Secretary of State grants permission for the relevant undertaker to withdraw from the non-household retail market, at least 2 months before the exit date, and
- (b) in the case of a person who becomes a customer after the Secretary of State grants permission, as soon as possible.

Modification or withdrawal of applications etc.

Power to change the exit date

13.—(1) A relevant undertaker that has made an exit application may change the exit date to a later date by notifying the Secretary of State in writing.

(2) The new date must fall within the period of 2 months beginning with the exit date originally specified in the exit application.

(3) The exit date—

- (a) may be changed before or after the exit application is determined, and
- (b) may be changed more than once.

(4) A relevant undertaker that changes the exit date must also change the exit date specified in the notice published on its website under regulation 9(1).

Withdrawal of exit application

14.—(1) A relevant undertaker may withdraw an exit application by notifying the Secretary of State in writing.

(2) An exit application is to be treated as withdrawn if an acquiring licensee notifies the Secretary of State in writing that it is withdrawing its consent under regulation 6(2).

(3) Where an exit application is withdrawn under paragraph (1), the Secretary of State must notify each acquiring licensee.

(4) Where an exit application is treated by paragraph (2) as withdrawn, the Secretary of State must notify the relevant undertaker and any other acquiring licensees.

Notification that a party no longer wishes to proceed

15.—(1) Permission for a relevant undertaker to withdraw from the non-household retail market lapses if, before the exit date—

- (a) the relevant undertaker notifies the Secretary of State in writing that it no longer wishes to proceed or
- (b) an acquiring licensee notifies the Secretary of State in writing that it no longer wishes to proceed.

(2) Where an exit application lapses because of paragraph (1)(a), the Secretary of State must notify each acquiring licensee.

(3) Where an exit application lapses because of paragraph (1)(b), the Secretary of State must notify the relevant undertaker and any other acquiring licensees.

PART 3

Transfer of undertaking

Transfer schemes

16.—(1) A relevant undertaker that has permission to withdraw from the non-household retail market may make one or more schemes for the transfer of property, rights or liabilities from it to an acquiring licensee.

(2) A relevant undertaker that has permission to withdraw from the non-household retail market must ensure that its rights and liabilities under agreements with transferred customers in relation to the supply of water or the provision of sewerage services are transferred to an acquiring licensee in accordance with a transfer scheme.

(3) Schedule 1 contains further provision about transfer schemes.

Transfer of outstanding complaints

17.—(1) This regulation applies where a relevant undertaker withdraws from the non-household retail market and a transferred customer has an outstanding complaint against the undertaker in respect of the supply of water or the provision of sewerage services to the customer's premises.

(2) The complaint is to be dealt with, on and after the exit date, by the acquiring licensee that takes over the supply of water or the provision of sewerage services to those premises.

(3) Anything done by or in relation to the relevant undertaker in connection with the complaint is to be treated, on and after the exit date, as having been done by or in relation to the acquiring licensee.

Transfer of information

18.—(1) A relevant undertaker that has made an exit application may disclose any specified information to an acquiring licensee that is providing or is proposing to provide services in relation to any transferred premises in the retail exit area.

(2) In this regulation “specified information” means—

- (a) information needed to determine whether premises are, or are not, transferred premises;
- (b) other information in relation to transferred premises;
- (c) information in relation to agreements entered into with transferred customers;
- (d) information in relation to billing arrangements for transferred customers;
- (e) information in relation to charges payable by transferred customers.

Determinations by the Authority

19.—(1) Where a relevant undertaker has withdrawn from the non-household retail market, the Authority may determine—

- (a) whether premises in the retail exit area are transferred premises for the purpose of these Regulations;
- (b) whether a person who was a customer of the relevant undertaker immediately before the exit date is a transferred customer for the purpose of these Regulations.

(2) The Authority may make a determination under paragraph (1) only on the application of—

- (a) a relevant undertaker,
- (b) a water supply licensee or sewerage licensee, or
- (c) the owner or occupier of the premises.

(3) Section 195A of the 1991 Act^(a) (reasons for decisions) applies as if the making of a determination under paragraph (1) were included in the list of decisions in subsection (1) of that section.

PART 4

Effect of exit

Effect on relevant undertakers

Prohibition on supply of water, or provision of sewerage services, by undertakers

20.—(1) A relevant undertaker is prohibited from supplying water or providing sewerage services to non-household premises in a retail exit area at any time on or after the exit date.

(2) Regulations 21 and 22 contain exceptions to that prohibition in relation to the relevant undertaker that made the relevant exit application.

(3) A prohibition imposed by this regulation is enforceable under section 18 of the 1991 Act.

Exiting undertakers may continue to supply their own premises

21.—(1) A water undertaker is not prohibited by regulation 20(1) from supplying water to premises which are owned by the undertaker and which form part of its supply system.

(2) A sewerage undertaker is not prohibited by regulation 20(1) from providing sewerage services to premises which are owned by the undertaker and which form part of its sewerage system.

Exiting undertaker's ongoing responsibility for customers in the process of switching

22. A relevant undertaker is not prohibited by regulation 20(1) from supplying water or providing sewerage services to premises if—

- (a) notice under section 63AA or 110K of the 1991 Act^(b) was served on the undertaker in relation to the premises before the exit date, and
- (b) the time specified in the notice falls within the period of 28 days beginning with the exit date and has not yet passed.

Modification of appointment of exiting undertaker

23.—(1) The Authority may modify the conditions of appointment of a company as a relevant undertaker under Chapter 1 of Part 2 of the 1991 Act where it considers it necessary or expedient to do so in consequence of the transfer of part of the relevant undertaker's undertaking under these Regulations.

(2) Where the Authority modifies conditions of an appointment under this regulation, it may make such incidental or consequential modifications of other conditions of the appointment as it considers necessary or expedient.

(3) The power of the Authority under this regulation to modify the conditions of an appointment may not be exercised after the end of the period of one year beginning with the exit date.

(a) Section 195A was inserted by section 51 of the Water Act 2003 (c.37). It is prospectively amended by section 56 of, and paragraph 112 of Schedule 7 to, the Water Act 2014 (c.21) from a date to be appointed.

(b) Section 63AA was inserted by section 101 of, and paragraph 17 of Schedule 8 to, the Water Act 2003. It is prospectively amended by section 56 of, and paragraph 63 of Schedule 7 to, the Water Act 2014 (c.21) from a date to be appointed. Section 110K is prospectively substituted by section 32 of the Water Act 2014 from a date to be appointed.

(4) Section 195A of the 1991 Act (reasons for decisions) applies as if the modification of the conditions of an appointment under this regulation were included in the list of decisions in subsection (1) of that section.

Effect on acquiring licensees

Acquiring licensee's duty to continue supply

24.—(1) An acquiring licensee must continue the supply of water or provision of sewerage services to any transferred premises on and after the exit date.

(2) Where a supply is made, or services are provided, by an acquiring licensee under paragraph (1)—

- (a) the terms and conditions in accordance with which the supply is to be made, or the services are to be provided, are—
 - (i) the terms and conditions provided for by a scheme under regulation 27,
 - (ii) such other terms and conditions as may be treated as having been agreed between the acquiring licensee and the owner or occupier of the premises by virtue of a transfer scheme under regulation 16, or
 - (iii) such other terms and conditions as may be agreed between the acquiring licensee and the owner or occupier of the premises, and
- (b) the supply is to be made, or the services are to be provided, until discontinued in accordance with the terms and conditions mentioned in sub-paragraph (a).

Acquiring licensee's duty to contact transferred customers

25.—(1) An acquiring licensee must take reasonable steps to notify each transferred customer, within the period of 2 months beginning with the exit date, that the acquiring licensee has taken over the supply of water or the provision of sewerage services to the customer's premises.

(2) The notice must—

- (a) give the name and contact details of the acquiring licensee, and
- (b) either—
 - (i) set out the terms and conditions in accordance with which the supply is made, or the services are provided, by the licensee, or
 - (ii) provide information as to where the terms and conditions can be found on the internet.

(3) The duty imposed on an acquiring licensee by this regulation is enforceable under section 18 of the 1991 Act(a).

Modification of licence conditions of acquiring licensee

26.—(1) The Authority may modify the conditions of a licence under Chapter 1A of Part 2 of the 1991 Act where it considers it necessary or expedient to do so in consequence of the transfer to the holder of that licence of part of a relevant undertaker's undertaking under these Regulations.

(2) Where the Authority modifies the conditions of a licence under this regulation, it may make such incidental or consequential modifications of other conditions of the licence as it considers necessary or expedient.

(3) The power of the Authority under this regulation to modify the conditions of a licence may not be exercised after the end of the period of one year beginning with the exit date.

(a) Section 18 was amended by section 101(1) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by section 56 of, and paragraph 26 of Schedule 7 to, the Water Act 2014 (c.21) from a date to be appointed.

(4) Section 195A of the 1991 Act (reasons for decisions) applies as if the modification of the conditions of a licence under this regulation were included in the list of decisions in subsection (1) of that section.

Effect on water supply or sewerage licensees generally

Schemes for terms and conditions

27.—(1) A water supply licensee or sewerage licensee that is providing or proposes to provide services under its water supply or sewerage licence in relation to a retail exit area must make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to such services.

(2) A scheme under this regulation may make different provision for different purposes, or for different areas.

(3) As soon as practicable after a licensee makes or revises a scheme under this regulation, the licensee must—

- (a) publish the scheme, or revised scheme, on the licensee's website, and
- (b) send a copy of the scheme, or revised scheme, to the Authority.

(4) The Authority may give a direction that terms and conditions applying to a supply of water or the provision of sewerage services in accordance with a scheme under this regulation must be modified as specified in the direction.

(5) A direction under paragraph (4) may apply—

- (a) generally to terms and conditions applying in accordance with a scheme under this regulation, or
- (b) to terms and conditions so applying in any particular case.

(6) It is the duty of a water supply or sewerage licensee to comply with a direction under paragraph (4), and this duty is enforceable under section 18 of the 1991 Act.

(7) An acquiring licensee's scheme under this regulation must provide for each transferred customer to be billed by the same method, and to pay by the same method, as immediately before the exit date.

Code about supply of water or provision of sewerage services etc. in retail exit area

28.—(1) The Authority must issue a code in relation to—

- (a) supplies of water to which a scheme under regulation 27 relates, and
- (b) the provision of sewerage services to which a scheme under regulation 27 relates.

(2) The code may, in particular, make provision about—

- (a) terms and conditions contained in schemes under regulation 27;
- (b) licensees informing owners or occupiers of premises of their schemes, before agreeing any terms and conditions for the provision of services.

(3) If the Authority considers that a water supply or sewerage licensee is not acting as required by provision contained in the code as mentioned in paragraph (2), the Authority may give the licensee a direction to do, or not to do, a particular thing specified in the direction.

(4) It is the duty of a water supply or sewerage licensee to comply with a direction under paragraph (3), and this duty is enforceable under section 18 of the 1991 Act.

(5) The Authority must from time to time review the code and, if appropriate, issue a revised code.

PART 5

Identifying a water supplier in a retail exit area

CHAPTER 1

Identifying a new supplier where a customer has switched supplier

Introduction

29. This Chapter applies where a water undertaker has withdrawn from the non-household retail market and, on or after the exit date, a transferred customer has—

- (a) arranged for the acquiring licensee to continue the supply of water to the customer's transferred premises on terms and conditions other than those provided for by a scheme under regulation 27, or
- (b) arranged for a water supply licensee other than the acquiring licensee to supply water to the customer's transferred premises.

Customer's right to apply for appointment of alternative water supply licensee

30. The transferred customer may apply to the Authority for an alternative water supply licensee to be appointed.

The Authority's duty to direct an alternative water supply licensee to provide the supply

31.—(1) On receiving an application under regulation 30, the Authority must direct an eligible water supply licensee to provide the water supply instead of the old water supply licensee.

- (2) The direction must specify the time from which the new licensee is to provide the supply.

Duties of water supply licensee directed to supply premises

32.—(1) A water supply licensee directed under regulation 31 to supply premises with water must notify the old water supply licensee.

- (2) The terms and conditions in accordance with which the supply is to be made are—
 - (a) those provided for by a scheme under regulation 27, or
 - (b) such other terms and conditions as may be agreed between the licensee and the customer.

- (3) The supply is to be made until it is discontinued in accordance with the terms and conditions mentioned in paragraph (2).

Saving for customer liability

33. Nothing in regulations 30 to 32 affects any liability of the customer for breach of contract or otherwise as a result of terminating arrangements for the supply of water by the old water supply licensee.

CHAPTER 2

Identifying a supplier where none can be found

Introduction

34.—(1) This Chapter applies where a water undertaker that has withdrawn from the non-household retail market receives a water supply request.

- (2) In this Chapter a "water supply request" means a request by the owner or occupier of any non-household premises in the retail exit area to supply those premises with water.

Undertaker's duty to notify person of retail exit

35.—(1) The water undertaker must, as soon as possible, notify the person who made the water supply request that the undertaker has withdrawn from the non-household retail market.

(2) The notice must explain that the person needs to arrange for a water supply licensee to supply the premises with water and explain, in general terms, the possible consequences under this Chapter if the person fails to do so.

Undertaker's duty to supply etc. pending identification of water supply licensee

36. Chapter 2A of Part 3 of the 1991 Act is to apply as if a water supply licensee had made a request to the water undertaker under sections 66A(1) and 66AA(1)(a), at the time at which the person made the water supply request, for the purpose of supplying the premises with water.

Water supply licensee is identified

37. Where a water undertaker is notified that a water supply licensee has agreed, or has been directed under regulation 39, to supply the premises with water—

- (a) the requests treated by regulation 36 as having been made by a water supply licensee are to be treated as having been made by that water supply licensee, and
- (b) any water supplied by the undertaker is to be treated as having been supplied by that licensee.

Water supply licensee is not identified

38.—(1) The water undertaker must notify the Authority if, by the end of the relevant period, the undertaker has not received a notice that a water supply licensee has agreed to supply the premises with water.

(2) The water undertaker must also notify the Authority if at any time after the end of the relevant period it receives a notice that a water supply licensee has agreed to supply the premises with water.

(3) A water undertaker is not required to notify the Authority under paragraph (1) or (2) if both of sections 66A(4) and 66AA(4) of the 1991 Act apply.

(4) In this Regulation—

“the relevant period” means the period of 22 working days beginning with the day on which the relevant undertaker receives the water supply request;

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(b).

The Authority's duty to direct a water supply licensee to supply premises

39.—(1) On receiving a notice under regulation 38(1), the Authority must direct an eligible water supply licensee to provide the supply.

(2) The Authority ceases to be under the duty imposed by this regulation if it receives a notice under regulation 38(2).

(a) Sections 66A and 66AA are prospectively substituted for section 66A by section 1(3) of, and paragraph 1 of Schedule 2 to, the Water Act 2014 (c.21) from a date to be appointed.

(b) 1971 c. 80.

Duties of water supply licensee directed to supply premises

40.—(1) A water supply licensee directed under regulation 39 to supply premises with water must notify the water undertaker (with the consequences mentioned in regulation 37).

(2) The terms and conditions in accordance with which the supply is to be made are—

- (a) those provided for by a scheme under regulation 27, or
- (b) such other terms and conditions as may be agreed between the licensee and the owner or occupier of the premises.

(3) The supply is to be made until it is discontinued in accordance with the terms and conditions mentioned in paragraph (2).

(4) Where a breach of the duty imposed by a direction under regulation 39 causes the owner or occupier of the premises to sustain loss or damage, the breach of duty is actionable at the suit of that owner or occupier.

(5) But in any proceedings brought against a water supply licensee in pursuance of paragraph (4) it is a defence for the licensee to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

CHAPTER 3

List of eligible water supply licensees

List of eligible water supply licensees

41.—(1) The Authority must maintain a list of eligible water supply licensees for each retail exit area.

(2) The list for each retail exit area must contain—

- (a) the acquiring licensee or licensees for the area, other than any self-supply licensees, and
- (b) any other water supply licensee with a retail authorisation that has applied to be included and has not applied to be removed.

(3) In paragraph (2) “self-supply licensee” means a water supply licensee whose retail authorisation relates only to premises of the licensee or persons associated with the licensee (and expressions used in this definition are to be read in accordance with Schedule 2A to the 1991 Act).

CHAPTER 4

Supplementary

Guidance about directions and list of eligible water supply licensees

42.—(1) The Authority must from time to time publish guidance about—

- (a) the exercise of its powers to give directions under regulations 31 and 39, and
- (b) the maintenance of the list of water supply licensees under regulation 41.

(2) The guidance may, in particular, make provision about—

- (a) the criteria used by the Authority to determine which eligible water supply licensee to direct under regulation 31 or 39;
- (b) the inclusion of water supply licensees in a list of eligible water supply licensees under regulation 41 and their removal.

Terms and conditions applying to performance of duties under Chapter 2

43.—(1) The Authority must by order specify the terms and conditions that, in the absence of express agreement by a water undertaker and water supply licensee, are to apply in relation to the performance by the water undertaker of any duties under section 66A or 66AA of the 1991 Act that arise by virtue of a request that is treated as having been made by Chapter 2 of this Part.

- (2) An order under this regulation—
- (a) may make any provision that may be made by order under section 66D(1) of the 1991 Act(a),
 - (b) is subject to the same constraints as an order under section 66D(1) (ignoring section 66D(1) itself and section 66D(2)), and
 - (c) is to be treated for all other purposes as being an order under section 66D(1).

PART 6

Identifying a provider of sewerage services in a retail exit area

CHAPTER 1

Identifying a new provider where a customer has switched provider

Introduction

44. This Chapter applies where a sewerage undertaker has withdrawn from the non-household retail market and, on or after the exit date, a transferred customer has—

- (a) arranged for the acquiring licensee to continue to provide sewerage services to the customer's transferred premises on terms and conditions other than those provided for by a scheme under regulation 27, or
- (b) arranged for a sewerage licensee other than the acquiring licensee to provide sewerage services to the customer's transferred premises.

Customer's right to apply for appointment of alternative sewerage licensee

45. The transferred customer may apply to the Authority for an alternative sewerage licensee to be appointed.

The Authority's duty to direct an alternative sewerage licensee to provide sewerage services

46.—(1) On receiving an application under regulation 45 the Authority must direct an eligible sewerage licensee to provide the sewerage services instead of the old sewerage licensee.

(2) The direction must specify the time from which the new licensee is to provide the sewerage services.

Duties of sewerage licensee directed to provide sewerage services to premises

47.—(1) A sewerage licensee directed under regulation 46 to provide sewerage services to premises must notify the old sewerage licensee.

(2) The terms and conditions in accordance with which the services are to be provided are—

- (a) those provided for by a scheme under regulation 27, or
- (b) such other terms and conditions as may be agreed between the licensee and the customer.

(3) The services are to be provided until they are discontinued in accordance with the terms and conditions mentioned in paragraph (2).

(a) Section 66D is prospectively substituted for section 66D by section 1(3) of, and paragraph 3 of Schedule 2 to, the Water Act 2014 (c.21) from a date to be appointed.

Saving for customer liability

48. Nothing in regulations 45 to 47 affects any liability of the transferred customer for breach of contract or otherwise as a result of terminating arrangements for the provision of sewerage services by the old sewerage licensee.

CHAPTER 2

Identifying a provider where none can be found

Introduction

49.—(1) This Chapter applies where a sewerage undertaker that has withdrawn from the non-household retail market receives a sewerage services request.

(2) In this Chapter a “sewerage services request” means a request by the owner or occupier of any non-household premises in the retail exit area to provide those premises with sewerage services.

Undertaker’s duty to notify person of retail exit

50.—(1) The sewerage undertaker must, as soon as possible, notify the person who made the sewerage services request that the undertaker has withdrawn from the non-household retail market.

(2) The notice must explain that the person needs to arrange for a sewerage licensee to provide sewerage services to the premises and explain, in general terms, the possible consequences under this Chapter if the person fails to do so.

Undertaker’s duty to provide services etc pending identification of sewerage licensee

51. Chapter 2A of Part 4 of the 1991 Act is to apply as if a sewerage licensee had made a request to the sewerage undertaker under sections 117A(1) and 117B(1)(a), at the time at which the person made the sewerage services request, for the purpose of providing the premises with sewerage services and dealing effectually with certain quantities of matter in the undertaker’s sewerage system.

Sewerage licensee is identified

52. Where a sewerage undertaker is notified that a sewerage licensee has agreed, or has been directed under regulation 54, to provide the premises with sewerage services—

- (a) the requests treated by regulation 51 as having been made by a sewerage licensee are to be treated as having been made by that sewerage licensee, and
- (b) any services provided by the undertaker are to be treated as having been provided by that licensee.

Sewerage licensee is not identified

53.—(1) The sewerage undertaker must notify the Authority if, by the end of the relevant period, the undertaker has not received a notice that a sewerage licensee has agreed to provide sewerage services to the premises.

(2) The sewerage undertaker must also notify the Authority if at any time after the end of the relevant period it receives a notice that a sewerage licensee has agreed to provide sewerage services to the premises.

(3) In this regulation—

(a) Sections 117A and 117B are prospectively inserted by section 4(3) of, and Schedule 4 to, the Water Act 2014 (c.21) from a date to be appointed

“the relevant period” means the period of 22 working days beginning with the day on which the relevant undertaker receives the sewerage services request;

“working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

The Authority’s duty to direct a sewerage licensee to provide services

54.—(1) On receiving a notice under regulation 53(1), the Authority must direct an eligible sewerage licensee to provide the sewerage services.

(2) The Authority ceases to be under the duty imposed by this regulation if it receives a notice under regulation 53(2).

Duties of sewerage licensee directed to provide services

55.—(1) A sewerage licensee directed under regulation 54 to provide sewerage services to premises must notify the sewerage undertaker (with the consequences mentioned in regulation 52).

(2) The terms and conditions in accordance with which the services are to be provided are—

- (a) those provided for by a scheme under regulation 27, or
- (b) such other terms and conditions as may be agreed between the licensee and the owner or occupier of the premises.

(3) The services are to be provided until they are discontinued in accordance with the terms and conditions mentioned in paragraph (2).

(4) Where a breach of the duty imposed by a direction under regulation 54 causes the owner or occupier of the premises to sustain loss or damage, the breach of duty is actionable at the suit of that owner or occupier.

(5) But in any proceedings brought against a sewerage licensee in pursuance of paragraph (4) it is a defence for the licensee to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

CHAPTER 3

List of eligible sewerage licensees

List of eligible sewerage licensees

56.—(1) The Authority must maintain a list of eligible sewerage licensees for each retail exit area.

(2) The list for each retail exit area must contain—

- (a) the acquiring licensee or licensees for the area, other than a sewerage licensee whose retail authorisation relates only to premises of the licensee or persons associated with the licensee (and expressions used in this paragraph are to be read in accordance with Schedule 2B to the 1991 Act), and
- (b) any other sewerage licensee with a retail authorisation that has applied to be included and has not applied to be removed.

CHAPTER 4

Supplementary

Guidance about directions and list of eligible sewerage licensees

57.—(1) The Authority must from time to time publish guidance about—

- (a) the exercise of its powers to give directions under regulations 46 and 54, and
- (b) the maintenance of the list of sewerage licensees under regulation 56.

(2) The guidance may, in particular, make provision about—

- (a) the criteria used by the Authority to determine which eligible sewerage licensee to direct under regulation 46 or 54;
- (b) the inclusion of sewerage licensees in a list of eligible sewerage licensees under regulation 56 and their removal.

Terms and conditions applying to performance of duties under Chapter 2

58.—(1) The Authority must by order specify the terms and conditions that, in the absence of express agreement by a sewerage undertaker and sewerage licensee, are to apply in relation to the performance by the sewerage undertaker of any duties under section 117A or 117B of the 1991 Act that arise by virtue of a request that is treated as having been made by Chapter 2 of this Part.

(2) An order under this regulation—

- (a) may make any provision that may be made by order under section 117E(1) of the 1991 Act(a),
- (b) is subject to the same constraints as an order under section 117E(1) (ignoring section 117E(1) itself and section 117E(2)), and
- (c) is to be treated for all other purposes as being an order under section 117E(1).

PART 7

Consequential amendments and review

Consequential amendments

59. Schedule 2 contains consequential amendments.

Review

60.—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) In this regulation, “review period” means the period of five years beginning with the day on which these Regulations come into force.

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Date _____

(a) Section 117E is prospectively inserted by section 4(3) of, and Schedule 4 to, the Water Act 2014 (c.21) from a date to be appointed.

SCHEDULE 1

Regulation 16(3)

Transfer schemes

Introduction

1. In this Schedule—

- (a) “transfer scheme” means a scheme made by a relevant undertaker under regulation 16;
- (b) a reference to an acquiring licensee is to an acquiring licensee to whom the scheme provides for the transfer of property, rights or liabilities.

Making of scheme

2.—(1) A transfer scheme does not take effect unless—

- (a) the acquiring licensee or licensees have consented to the scheme, and
- (b) the Authority has approved the scheme.

(2) A transfer scheme takes effect at the time specified in the scheme.

(3) The time so specified must not be before the exit date.

Approval and modification by the Authority

3.—(1) The Authority may modify a transfer scheme before approving it.

(2) After a transfer scheme has taken effect—

- (a) the Authority may modify the scheme by notice to the relevant undertaker and each acquiring licensee, and
- (b) the scheme as modified is to be treated for all purposes as having come into force at the time specified under paragraph 2(2).

(3) The Authority may make incidental, supplementary, consequential, transitional or transitory provision in connection with giving effect to modifications under sub-paragraph (2).

(4) The Authority may modify a scheme under this paragraph only if the relevant undertaker and each acquiring licensee consents.

(5) The Authority may require the relevant undertaker or an acquiring licensee to provide information or other assistance for the purposes of enabling it to decide whether to approve or modify a transfer scheme.

(6) The Authority may refuse to approve a transfer scheme if the relevant undertaker or an acquiring licensee has failed to comply with a requirement imposed under sub-paragraph (5).

(7) A requirement imposed under sub-paragraph (5) for the purposes of enabling the Authority to decide whether to modify a transfer scheme is enforceable under section 18 of the 1991 Act(a).

Identification of property etc. to be transferred

4.—(1) A transfer scheme may identify the property, rights or liabilities to be transferred by specifying or describing them.

(2) A transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

Property, rights and liabilities that may be transferred

5.—(1) A transfer scheme may transfer—

(a) Section 18 was amended by section 101(1) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by section 56 of, and paragraph 26 of Schedule 7 to, the Water Act 2014 (c.21) from a date to be appointed.

- (a) property, rights or liabilities that could not otherwise be transferred;
 - (b) rights or liabilities under an enactment.
- (2) A transfer scheme may transfer—
- (a) property in any part of the United Kingdom or elsewhere;
 - (b) rights or liabilities under the law of any part of the United Kingdom or any country or territory outside the United Kingdom.
- (3) A transfer scheme may transfer property, rights or liabilities acquired or arising after the scheme has been made but before it takes effect.
- (4) A transfer scheme may provide for a transfer to take effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (5) For this purpose “restriction” includes—
- (a) any restriction, inability or incapacity affecting what can and cannot be transferred (whether generally or by a particular person), and
 - (b) a requirement for consent (by any name).

Division of property, rights or liabilities

- 6.**—(1) A transfer scheme may contain provision for the division of property, rights or liabilities, including provision to—
- (a) create for the relevant undertaker or an acquiring licensee an interest in or right over property transferred in accordance with the scheme;
 - (b) create for an acquiring licensee an interest in or right over property retained by the relevant undertaker;
 - (c) create new rights and liabilities as between the relevant undertaker and an acquiring licensee or as between acquiring licensees.
- (2) A transfer scheme that contains provision under sub-paragraph (1) may make incidental modifications of the interests, rights or liabilities of third parties.
- (3) The reference to third parties is to persons other than—
- (a) the relevant undertaker, or
 - (b) an acquiring licensee that is a party to the transfer scheme.
- (4) Paragraph 5(1)(a) and (4) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

Payments

- 7.**—(1) A transfer scheme may include provision for payments to be made by an acquiring licensee to the relevant undertaker in respect of anything transferred or created by the scheme.
- (2) Provision included in a transfer scheme by virtue of sub-paragraph (1) is enforceable in the same way as if the thing had been transferred or created by agreement between the parties (and, where relevant, as if it had been capable of being transferred or created by agreement between them).

Foreign property

- 8.**—(1) This paragraph applies where a transfer scheme provides for the transfer of any foreign property, rights or liabilities from the relevant undertaker to an acquiring licensee.
- (2) The scheme may impose duties on the relevant undertaker and acquiring licensee to take steps to ensure that the vesting of the foreign property, right or liability in the acquiring licensee by the scheme is effective under the applicable foreign law.

(3) The scheme may require the relevant undertaker to comply with any directions of the acquiring licensee in performing any duty imposed on the relevant undertaker by virtue of sub-paragraph (2).

(4) The scheme may provide that, until the vesting of the foreign property, right or liability is effective under the applicable foreign law, the relevant undertaker must—

- (a) hold the property or right for the benefit of the acquiring licensee, or
- (b) discharge the liability on behalf of the acquiring licensee.

(5) Nothing in any provision included in the scheme by virtue of this paragraph prejudices the effect under the law of England and Wales of the vesting of any foreign property, right or liability in the acquiring licensee in accordance with a transfer scheme.

(6) For the purposes of this paragraph, property or a right or liability is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside England and Wales.

(7) Expenses incurred by the relevant undertaker in consequence of any provision included in a scheme by virtue of this paragraph must be met by the acquiring licensee.

(8) Provision included in a transfer scheme by virtue of this paragraph is enforceable in the same way as if it were contained in a contract between the relevant undertaker and the acquiring licensee.

Supplementary provision

9.—(1) A transfer scheme may include incidental, supplementary, consequential, transitional or transitory provision.

(2) Nothing elsewhere in this Schedule limits sub-paragraph (1).

10.—(1) A transfer scheme may provide, in relation to transfers in accordance with the scheme—

- (a) for an acquiring licensee to be treated as the same person in law as the relevant undertaker,
- (b) for agreements made, transactions effected or other things done by or in relation to the relevant undertaker to be treated as made, effected or done by or in relation to an acquiring licensee,
- (c) for references in any document to the relevant undertaker, or to an employee or office holder of it, to have effect with such modifications as are specified in the scheme, and
- (d) for proceedings commenced by or against the relevant undertaker to be continued by or against an acquiring licensee.

(2) In sub-paragraph (1)—

- (a) "document" includes an agreement or instrument but does not include an enactment, and
- (b) a reference to a transfer in accordance with a transfer scheme includes the creation in accordance with a transfer scheme of an interest, right or liability.

11. A transfer scheme may make provision for disputes as to the effect of the scheme between the relevant undertaker and an acquiring licensee or between acquiring licensees to be referred to such arbitration as may be specified in or determined under the scheme.

12. If, in consequence of a transfer scheme, a person is entitled to possession of a document relating in part to the title to, or to the management of, land or other property in England and Wales—

- (a) the scheme may provide for the person to be treated as having given another person an acknowledgement in writing of the other person’s right to production of the document and to delivery of copies of it, and

- (b) section 64 of the Law of Property Act 1925(a) (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.

Staff

13. The Transfer of Undertakings (Protection of Employment) Regulations 2006(b) apply to a transfer under a transfer scheme of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).

Effect of transfer scheme

14. At the time at which a transfer scheme takes effect—

- (a) any property, rights or liabilities to be transferred by the scheme become, by virtue of this paragraph, the property, rights or liabilities of the person to whom the scheme provides for them to be transferred, and
- (b) any interests, rights or liabilities to be created by the scheme become, by virtue of this paragraph, the interests, rights or liabilities of the person in whose favour or in relation to whom the scheme provides for them to be created.

15. But a transfer scheme is of no effect if the relevant undertaker's permission to withdraw from the non-household retail market lapses under regulation 15.

SCHEDULE 2

Regulation 59

Consequential amendments

- 1.** The 1991 Act is amended as follows.
- 2.** In section 41(c) (duty to comply with water main requisition), after subsection (2) insert—
“(2A) The duty to provide a water main under this section does not arise in relation to premises in a retail exit area that are not household premises.”.
- 3.** In section 45(d) (duty to make connections with main), after subsection (1) insert—
“(1ZA) The duty to make a connection under this section does not apply in relation to premises in a retail exit area that are not household premises.”.
- 4.** In section 52(e) (the domestic supply duty), in subsection (4A)(a), after “water undertaker” insert “or they are in a retail exit area”.
- 5.** In section 55(f) (supplies for non-domestic purposes), after subsection (1A) insert—
“(1B) But this section does not apply to any premises if—
(a) they are in a retail exit area, and
(b) they are not household premises (as defined in section 17C(g) above).”.
- 6.** In section 63AC(h) (interim duty: domestic and non-domestic supply), after subsection (3) insert—

(a) 1925 c. 20.
(b) S.I. 2006/246, to which there are amendments not relevant to these Regulations.
(c) Section 41, to which there are amendments not relevant to these Regulations.
(d) Section 45, to which there are amendments not relevant to these Regulations.
(e) Section 52, to which there are amendments not relevant to these Regulations.
(f) Section 55, to which there are amendments not relevant to these Regulations.
(g) Section 17C, to which there are amendments not relevant to these Regulations.
(h) Section 63AC, to which there are amendments not relevant to these Regulations.

“(3A) Where the premises are in a retail exit area the Authority must give a direction under subsection (3).”.

7. In section 98(a) (duty to comply with sewer requisition), after subsection (2A) insert—

“(2B) The duty to provide a public sewer or the provision of a lateral drain under this section does not arise in relation to premises in a retail exit area that are not household premises.”.

8. In section 110L(b) (interim duty: sewerage undertakers and sewerage licensees), after subsection (3) insert—

“(3A) Where the premises are in a retail exit area the Authority must give a direction under subsection (3).”.

9. In section 195(c) (the Authority’s register), in subsection (2)(bc), after “2005” insert “or regulation 19 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016”.

10. In section 219(d) (general interpretation), in subsection (1), at the appropriate place insert—

““retail exit area” has the meaning given by section 42 of the Water Act 2014;”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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- (a) Section 98, to which there are amendments not relevant to these Regulations.
 - (b) Section 110L, to which there are amendments not relevant to these Regulations.
 - (c) Section 195, to which there are amendments not relevant to these Regulations.
 - (d) Section 219, to which there are amendments not relevant to these Regulations.