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WATER INDUSTRY, ENGLAND AND WALES

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

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The Secretary of State, in exercise of the powers conferred by sections 42(1), (2), (3) and (5), 43(1)(b), (d), (e), (f) and (g), (3)(a), (4), (7) and (8), 44(1)(a), (3)(a) and (5)(a), 45, 46(3), (5), (7) and (8), 47(1), (2) and (3), 49 and 51(1), (3), (4) and (5) 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(**b**);

(c) the CMA;

(d) the Consumer Council for Water;

(e) relevant undertakers whose areas are wholly or mainly in England;

(f) licensed water suppliers(**c**); 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 3rd October 2016.

Interpretation

2.—(1) In these Regulations—

"the 1991 Act" means the Water Industry Act 1991(**d**);

"acquiring licensee" has the meaning given by regulation 6;

"eligible sewerage licensee", except in regulation 11, means a sewerage licensee whose name appears in the relevant list of eligible sewerage licensees maintained under regulation 58;

"eligible water supply licensee", except in regulation 11, means a water supply licensee whose name appears in the relevant list of eligible water supply licensees maintained under regulation 43;

"exit application" means an application under regulation 4;

"exit date" has the meaning given by regulation 8;

"local statutory provision" means—

(a) a provision of a local Act (including an Act confirming a provisional order);

(**a**) 2014 c.21.

(**b**) The WSRA is defined in section 52(1) of the Water Act 2014 as the Water Services Regulation Authority (known as Ofwat).

(**c**) Section 53(1) of the Water Act 2014 requires the Secretary of State to consult "water supply licensees" before making these Regulations. However, pending prospective amendment by the Water Act 2014 from a date to be appointed, section 17B(9) of the 1991 Act currently provides that references to a licensed water supplier are references to a company which is the holder of a water supply licence.

(**d**) 1991 c. 56.

(b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;

(c) a provision of an instrument made under any provision falling within paragraph (a) or (b); or

(d) a provision of any other instrument which is in the nature of a local enactment;

"relevant undertaker" means a water undertaker or sewerage undertaker;

"retail authorisation" has the meaning given—

(a) for a water supply licence, in paragraph 3 of Schedule 2A to the 1991 Act(**a**);

(b) for a sewerage licence, in paragraph 1 of Schedule 2B to the 1991 Act(**b**);

"sewerage services request" has the meaning given by regulation 51(2);

"sewerage system", in relation to a sewerage undertaker, has the meaning given by section 17BA(7) of the 1991 Act(**c**);

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

"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;

"transfer scheme" has the meaning given by paragraph 1(a) of Schedule 1;

"water supply request" has the meaning given by regulation 36(2).

(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(**e**) 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).

(**a**) Schedule 2A was inserted by Schedule 1 to the Water Act 2014.
(**b**) Schedule 2B was inserted by Schedule 3 to the Water Act 2014.
(**c**) Section 17BA(7) was inserted by section 4(1) of the Water Act 2014.
(**d**) Section 17B(4A) is prospectively substituted by section 2(2) of the Water Act 2014 from a date to be appointed.
(**e**) The definition of "retail exit area" may be found in section 52(1) of the Water Act 2014.

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

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 provide reasons for wanting to exit

5. An exit application must provide 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(**a**) 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.

(**a**) The definition of "eligible licensee" may be found in section 52(1) of the Water Act 2014.

(3) The premises must be identified in a way that will include 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 WSRA, 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**).

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 an acquiring licensee to elect to be an eligible water supply licensee for the purposes of section 63AC of the 1991 Act(**b**);

(b) a condition requiring an acquiring licensee to elect to be an eligible sewerage licensee for the purposes of section 110L of the 1991 Act(**c**);

(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.

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

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**) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by paragraph 26 of Schedule 7 to the Water Act 2014 (c.21) from a date to be appointed.
(**b**) Section 63AC is prospectively substituted by section 31 of the Water Act 2014 from a date to be appointed.
(**c**) Section 110L is prospectively inserted by section 32 of the Water Act 2014 from a date to be appointed.
(**d**) Section 195A was inserted by section 51 of the Water Act 2003. It is prospectively amended by paragraph 112 of Schedule 7 to the Water Act 2014 from a date to be appointed.

(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;

(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 given 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 WSRA

19.—(1) Where a relevant undertaker has withdrawn from the non-household retail market, the WSRA 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 WSRA 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) The WSRA may require a relevant undertaker, a water supply licensee or a sewerage licensee to provide information or other assistance for the purpose of enabling the WSRA to make a determination in accordance with paragraph (1).

(4) A requirement imposed under paragraph (3)is enforceable under section 18 of the 1991 Act.

(5) Section 195A of the 1991 Act (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 23 and 24 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.

Effect of inset appointment on retail exit area

21.—(1) This regulation applies when—

(a) a company is appointed under section 6(1) of the 1991 Act(**a**) to be the relevant undertaker for a new inset area; or

(b) the area of appointment of a relevant undertaker that has not withdrawn from the non-household retail market is varied, in accordance with section 7(2) of the 1991 Act(**b**), to include a new inset area.

(2) When the appointment or the variation takes effect the new inset area is no longer part of a retail exit area.

(3) In this regulation, "new inset area" means an area—

(a) which is part of a retail exit area; and

(b) none of the premises in which is served by a relevant undertaker.

Expansion of retail exit area – inset appointments

22.—(1) This regulation applies when the area of appointment of a relevant undertaker that has withdrawn from the non-household retail market is varied, in accordance with section 7(2) of the 1991 Act, to include an area ("the new inset exit area")—

(a) which is not part of a retail exit area; and

(b) none of the premises in which is served by a relevant undertaker.

(2) Regulations 20(1) and (3), 23 and 29 to 60 apply to the new inset exit area as they apply to a retail exit area.

(**a**) Section 6(1) was amended by section 36(2) of the Water Act 2003 (c. 37).
(**b**) Section 7(2) was amended by section 36(2) of the Water Act 2003.

Exiting undertakers may continue to supply their own premises

23.—(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

24. 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(**a**) 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

25.—(1) The WSRA 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 WSRA 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) Before making a modification under this regulation, the WSRA must consult—

(a) the company holding the appointment, and

(b) such other persons as the WSRA thinks it appropriate to consult.

(4) The power of the WSRA 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.

(5) 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

26.—(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 29,

(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

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

(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

27.—(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 give the name and contact details of the acquiring licensee and—

(a) set out the terms and conditions in accordance with which the supply is made, or the services are provided, by the licensee; or

(b) 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

28.—(1) The WSRA may modify the conditions of a licence under Chapter 1A of Part 2 of the 1991 Act(**b**) 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 WSRA 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) Before making a modification under this regulation, the WSRA must consult—

(a) the person holding the licence, and

(b) such other persons as the WSRA thinks it appropriate to consult.

(4) The power of the WSRA 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.

(5) Section 195A of the 1991 Act (reasons for decisions)(**c**) 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

29.—(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**) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003. It is prospectively amended by paragraph 26 of Schedule 7 to the Water Act 2014 from a date to be appointed.

(**b**) Chapter 1A of Part 2 of the 1991 Act was inserted by paragraph 2 of Schedule 4 to the Water Act 2003. It is prospectively amended by the Water Act 2014 from a date to be appointed.

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

(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 WSRA.

(4) The WSRA 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

30.—(1) The WSRA must issue a code in relation to—

(a) supplies of water to which a scheme under regulation 29 relates, and

(b) the provision of sewerage services to which a scheme under regulation 29 relates.

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

(a) terms and conditions contained in schemes under regulation 29;

(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 WSRA 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 WSRA 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 WSRA 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

31. 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 29, 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

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

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

33.—(1) On receiving an application under regulation 32, the WSRA must direct an eligible water supply licensee to provide the water supply instead of the previous 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

34.—(1) A water supply licensee directed under regulation 33 to supply premises with water must notify the previous 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 29, 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

35. Nothing in regulations 32 to 34 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 previous water supply licensee.

CHAPTER 2

Identifying a supplier where none can be found

Introduction

36.—(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

37.—(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

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

(**a**) Chapter 2A of Part 3 of the 1991 Act was inserted by paragraph 3 of Schedule 4 to the Water Act 2003 (c. 37).

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

Water supply licensee is identified

39. Where a water undertaker is notified that a water supply licensee has agreed, or has been directed under regulation 41, to supply the premises with water—

(a) the requests treated by regulation 38 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

40.—(1) The water undertaker must notify the WSRA 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 WSRA 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 WSRA under paragraph (1) or (2) if 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(**a**).

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

41.—(1) On receiving a notice under regulation 40(1), the WSRA must direct an eligible water supply licensee to provide the supply.

(2) The WSRA ceases to be under the duty imposed by this regulation if it receives a notice under regulation 40(2).

Duties of water supply licensee directed to supply premises

42.—(1) A water supply licensee directed under regulation 41 to supply premises with water must notify the water undertaker (with the consequences mentioned in regulation 39).

(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 29, 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).

CHAPTER 3

List of eligible water supply licensees

List of eligible water supply licensees

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

(**a**) 1971 c. 80.

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

(a) the acquiring licensee or licensees for the area, other than—

(i) any self-supply licensees; and

(ii) any licensee that the WSRA has decided not to include on the list in accordance with paragraph (3); 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) At the request of an acquiring licensee, the WSRA may decide not to include that licensee on the list of eligible water supply licensees for a retail exit area where—

(a) such a decision would leave at least one acquiring licensee on that list; and

(b) the WSRA is satisfied on the basis of the proposed business model of the acquiring licensee that it would be appropriate for that licensee not to be included on the list.

(4) 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(**a**)).

CHAPTER 4

Supplementary

Guidance about directions and list of eligible water supply licensees

44.—(1) The WSRA must from time to time publish guidance about—

(a) the exercise of its powers to give directions under regulations 33 and 41, and

(b) the maintenance of the list of water supply licensees under regulation 43.

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

(a) the criteria used by the WSRA to determine which eligible water supply licensee to direct under regulation 33 or 41;

(b) the inclusion of water supply licensees in a list of eligible water supply licensees under regulation 43 and their removal.

Terms and conditions applying to performance of duties under Chapter 2

45.—(1) The WSRA 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(**b**),

(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).

(**a**) Schedule 2A to the 1991 Act was inserted by section 1(2) of, and Schedule 1 to, the Water Act 2014.

(**b**) Section 66D is prospectively substituted for section 66D by paragraph 3 of Schedule 2 to the Water Act 2014 from a date to be appointed.

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

46. 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 29, 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

47. The transferred customer may apply to the WSRA for an alternative sewerage licensee to be appointed.

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

48.—(1) On receiving an application under regulation 47 the WSRA must direct an eligible sewerage licensee to provide the sewerage services instead of the previous 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

49.—(1) A sewerage licensee directed under regulation 48 to provide sewerage services to premises must notify the previous 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 29, 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).

Saving for customer liability

50. Nothing in regulations 47 to 49 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 previous sewerage licensee.

CHAPTER 2

Identifying a provider where none can be found

Introduction

51.—(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

52.—(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

53. Chapter 2A of Part 4 of the 1991 Act(**a**) is to apply as if a sewerage licensee had made a request to the sewerage undertaker under sections 117A(1) or 117B(1) of that Act(**b**), 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

54. Where a sewerage undertaker is notified that a sewerage licensee has agreed, or has been directed under regulation 56, to provide the premises with sewerage services—

(a) the requests treated by regulation 53 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

55.—(1) The sewerage undertaker must notify the WSRA 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 WSRA 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—

"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 WSRA's duty to direct a sewerage licensee to provide services

56.—(1) On receiving a notice under regulation 55(1), the WSRA must direct an eligible sewerage licensee to provide the sewerage services.

(2) The WSRA ceases to be under the duty imposed by this regulation if it receives a notice under regulation 55(2).

Duties of sewerage licensee directed to provide services

57.—(1) A sewerage licensee directed under regulation 56 to provide sewerage services to premises must notify the sewerage undertaker (with the consequences mentioned in regulation 54).

(**a**) Chapter 2A of Part 4 of the 1991 Act was inserted by Schedule 4 to the Water Act 2014.
(**b**) Sections 117A and 117B are prospectively inserted by Schedule 4 to the Water Act 2014 from a date to be appointed.

(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 29, 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).

CHAPTER 3

List of eligible sewerage licensees

List of eligible sewerage licensees

58.—(1) The WSRA 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—

(i) 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(**a**)); and

(ii) any licensee that the WSRA has decided not to include on the list in accordance with paragraph (3); and

(b) any other sewerage licensee with a retail authorisation that has applied to be included and has not applied to be removed.

(3) At the request of an acquiring licensee, the WSRA may decide not to include that licensee on the list of eligible sewerage licensees for a retail exit area where—

(a) such a decision would leave at least one acquiring licensee on that list; and

(b) the WSRA is satisfied on the basis of the proposed business model of the acquiring licensee that it would be appropriate for that licensee not to be included on the list.

CHAPTER 4

Supplementary

Guidance about directions and list of eligible sewerage licensees

59.—(1) The WSRA must from time to time publish guidance about—

(a) the exercise of its powers to give directions under regulations 48 and 56, and

(b) the maintenance of the list of sewerage licensees under regulation 58.

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

(a) the criteria used by the WSRA to determine which eligible sewerage licensee to direct under regulation 48 or 56;

(b) the inclusion of sewerage licensees in a list of eligible sewerage licensees under regulation 58 and their removal.

Terms and conditions applying to performance of duties under Chapter 2

60.—(1) The WSRA 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**) Schedule 2B to the 1991 Act was inserted by section 4(2) of, and Schedule 3 to, the Water Act 2014 (c. 21).

(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).

Amendment or revocation of local statutory provisions

61.—(1) On the request of a relevant undertaker that has made an exit application, and with the agreement of the acquiring licensee or licensees, the Secretary of State may, by regulations made by statutory instrument, amend or repeal any local statutory provision that imposes duties on the relevant undertaker relating to the supply of retail services.

(2) Regulations made under this regulation may—

(a) make provision applying generally in relation to local statutory provisions of a description specified in the regulations;

(b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;

(c) contain such incidental, supplementary, consequential, transitional or transitory provision as the Secretary of State considers appropriate.

(3) A statutory instrument containing regulations made under this regulation is subject to annulment in pursuance of a resolution of either House of Parliament.

PART 7

Consequential amendments and review

Consequential amendments

62. Schedule 2 contains consequential amendments.

Review

63.—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision in these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory provision;

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(3) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(4) Subsequent reports under this regulation must be published at intervals not exceeding five years.

(5) In this regulation, "regulatory provision" has the meaning given by section 32(4) of the Small Business, Enterprise and Employment Act 2015(**b**).

(**a**) Section 117E is prospectively inserted by Schedule 4 to the Water Act 2014 from a date to be appointed.
(**b**) 2015 c. 26.

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

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 WSRA 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 WSRA

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

(2) After a transfer scheme has taken effect—

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

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

(5) The WSRA 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 WSRA 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 WSRA to decide whether to modify a transfer scheme is enforceable under section 18 of the 1991 Act(**a**).

(**a**) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by paragraph 26 of Schedule 7 to the Water Act 2014 from a date to be appointed.

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) 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 England and Wales;

(b) rights or liabilities under the law of England and Wales.

(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) In paragraph (4), "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) In paragraph (2), "third parties" means 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).

Supplementary provision

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

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

(3) 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.

(4) In sub-paragraph (3)—

(a) "document" includes an agreement or instrument but does not include an enactment;

(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.

(5) 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.

(6) 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 (production and safe custody of documents)(**a**) is to apply to the acknowledgement on the basis that the acknowledgement does not contain an expression of contrary intention.

Staff

9. 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

10.—(1) 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 sub-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 sub-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.

(2) 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.

(**a**) 1925 c. 20.
(**b**) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

SCHEDULE 2

Regulation 62

Consequential amendments

1. The 1991 Act is amended as follows.

2. In section 41, 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, 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, in subsection (4A)(a)(**a**), after "water undertaker" insert "or they are in a retail exit area".

5. In section 55, after subsection (1A)(**b**) 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(**c**) above).".

6. In section 63AC(**d**), after subsection (3) insert—

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

7. In section 98, after subsection (2A)(**e**) 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(**f**), 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, in subsection (2)(bc)(**g**), after "the Water Supply Licence (New Customer Exception) Regulations 2005" insert "or regulation 19 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (S.I. 2016/xxx)".

10. In section 206, in subsection (3)(b)(**h**), for "or the Water Act 2003" substitute ", the Water Act 2003 or Chapter 4 of Part 1 of the Water Act 2014".

11. In section 219, in subsection (1), at the appropriate place insert—

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

(**a**) Subsection (4A) was inserted by paragraph 15(3) of Schedule 8 to the Water Act 2003 (c. 37) and is prospectively amended by paragraph 27 of Schedule 5, and paragraph 58 of Schedule 7, to the Water Act 2014 (c. 21) from a date to be appointed.

(**b**) Subsection (1A) was inserted by paragraph 16(2) of Schedule 8 to the Water Act 2003.

(**c**) Section 17C was inserted by paragraph 2 of Schedule 4 to the Water Act 2003.

(**d**) Section 63AC is prospectively substituted, together with sections 63AD to 63AF, for section 63AC by section 31 of the Water Act 2014 from a date to be appointed.

(**e**) Subsection (2A) was inserted by section 95(3) of the Water Act 2003.

(**f**) Section 110L is prospectively inserted by section 32 of the Water Act 2014 from a date to be appointed.

(**g**) Subsection (2)(bc) was amended by S.I. 2005/3076 and is prospectively amended by paragraph 111(2)(a) of Schedule 7 to the Water Act 2014 from a date to be appointed.

(**h**) Subsection (3)(b) was amended by paragraph 27(5)(a)(iii) of Part 2 of Schedule 7, and paragraph 47(2) of Schedule 8, to the Water Act 2003 and is prospectively amended by paragraph 116(2) of Schedule 7 to the Water Act 2014 from a date to be appointed.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for water and sewerage undertakers whose area is wholly or mainly in England to apply to the Secretary of State for permission to exit the non-household retail market for that area.

Part 1 of these Regulations provides for relevant definitions and specifies certain functions for the purposes of section 42(4) of the Water Act 2014.

Part 2 of the Regulations concerns the making and content of exit applications and their determination by the Secretary of State. Applications must identify the acquiring licensees, the premises that are to be transferred to those licensees and the exit date.Notice of an exit application must be published on the exiting undertaker's website.

Part 3 of the Regulations concerns the transfer of property, rights and liabilities to the acquiring licensees. A transfer scheme must be used for special agreements but schemes are otherwise optional. The Water Services Regulation Authority (known as Ofwat) has a power to determine whether premises and customers in a retail exit area have been transferred to acquiring licensees.

Part 4 of the Regulations concerns the changes that will be made to the statutory duties of the exited undertaker and acquiring licensee following an exit. An undertaker will be prohibited from supplying retail services in respect of water supply or sewerage to non-household premises in an exit area.

Ofwat will be able to modify the conditions of appointment of the exiting undertaker in consequence of the exit.

Acquiring licensees will have to continue to provide retail market services in a retail exit area following the exit. Ofwat will be able to modify the licence conditions of the acquiring licensees in consequence of the exit. Licensees providing retail market services in an exit area will be required to act in accordance with a published scheme of terms and conditions (the "deemed contract"), unless customers have agreed different terms with the licensee. Licensees' deemed contracts will have to comply with relevant provisions in a code produced by Ofwat.

Part 5 of the Regulations outlines how customers can be assured of finding a supplier of water retail services in an area where the undertaker has exited the retail market. Chapter 1 provides for transferred customers who have switched away from the acquiring licensee's deemed contract to retain the right to apply to Ofwat to be allocated to an alternative licensee and placed on their deemed contract. Ofwat will then direct a licensee from a group of participating licensees (also known as the 'supplier of first resort' pool) to supply the customer on the deemed contract.

Chapter 2 sets out the process by which new customers will be allocated a retail supplier if they do not identify one for themselves. The relevant undertaker in an exit area must inform a new customer that the undertaker has exited the retial market and how to identify a licensee to provide those services. Where the customer fails to contract with a licensee, the undertaker must notify Ofwat which must direct a licensee from a list of eligible licensees to provide the retail services.

Chapter 3 makes provision requiring Ofwat to maintain a list of eligible water supply licensees to provide retail services for each retail exit area. The list must comprise the acquiring licensees for that exit area and any other licensee that has applied to be included. Exceptions apply for licensees that have specialised business models.

Chapter 4 requires Ofwat to publish guidance on the exercise of its powers to direct a licensee to provide services and to maintain a list of eligible licensees. Ofwat is required to specify by order the terms and conditions that, in the absence of an express agreement, are to apply to the contractual relationship between the undertaker and any licensee directed to provide retail services under Chapter 2.

Part 6 of the Regulations makes corresponding provison for the identification of a provider of sewerage services in a retail exit area.

Part 7 of the Regulations makes provision for review of the Regulations by the Government.

Schedule 1 to the Regulations makes further provision in respect of the transfer schemes mentioned in Part 3. A transfer scheme must be approved by Ofwat and may provide for the transfer of property, rights and liabilities, with or without payment by the acquiring licensee. Schedule 2 makes consequential amendments to the Water Industry Act 1991.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Water Services Team, the Department for Environment, Food and Rural Affairs, Area 3D, Nobel House, 17 Smith Square, London SW1P 3JR, and is published alongside the Water Act 2014 at www.legislation.gov.uk.

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