**EXPLANATORY MEMORANDUM TO**

**THE WATER SUPPLY (AMENDMENT TO THE THRESHOLD REQUIREMENT) REGULATIONS 2011**

**2011 No. 3014**

**1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 Currently only non-household premises using in excess of 50 megalitres of water per annum are eligible to switch to a different water supplier and this threshold is set out in the Water Industry Act 1991 ("WIA"). The instrument will amend the WIA and reduce this threshold to 5 megalitres of water per annum, increasing the size of the competitive market for water supply services and allowing many more non-household premises to choose their water supplier.

2.2 The change will only be made to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in England, premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales will still be subject to the 50 megalitre per annum threshold.

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

## 4. Legislative Context

4.1 In 2006, the Water Supply Licensing regime ("the WSL regime") was introduced into the Water Sector. This regime was designed to permit some customers within the sector to choose to receive their water services from new entrant providers that had been licensed under the WSL regime. In order for a water supply licensee to be permitted to supply the premises of a customer, the following three requirements must be satisfied:

- the premises of the customer cannot be household premises;
- the threshold requirement must be met (i.e. the water supply licensee must expect to supply not less than a certain quantity of water to the premises of that customer in a year); and
- the premises of the customer must not be supplied with water by another company pursuant to a water supply licence.

4.2 The Water Supply (Amendment to the Threshold Requirement) Regulations 2011 amends the present threshold, 50 megalitres per annum, to a new threshold of 5 megalitres per annum.

## 5. Territorial Extent and Application

5.1 This instrument applies to the territory occupied by appointed water companies ("water undertakers") whose supply systems are wholly or mainly in England. In practice this means they follow the boundaries of the water companies rather than the common jurisdictional boundary and apply to the majority of the geographic area of England and a small minority of the geographic area of Wales.

5.2 Section 17D (12) of the WIA sets out that the power to amend the threshold requirement in relation to premises supplied with water using the supply system of a water undertaker wholly or mainly in Wales is exercisable by the Welsh Ministers and not by the Secretary of State. For non-household customers of water undertakers operating wholly of mainly in Wales the threshold will remain at 50 Megalitres per annum.

## 6. European Convention on Human Rights

6.1 The Minister, Richard Benyon, Parliamentary Under-Secretary for Natural Environment and Fisheries, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Water Supply (Amendment to the Threshold Requirement) Regulations 2011 are compatible with the Convention rights.

## 7. Policy background

7.1 The independent review of competition and innovation in water markets led by Professor Martin Cave ("the Cave review") published its final report in April 2009. This report recommended the reform the WSL regime and in particular measures to extend the scope of the regime. The review recommended that the threshold at which customers were eligible to switch to a water supply licensee be lowered from 50 megalitres of water per annum to 5 megalitres of water per annum.

7.2 Lowering the threshold in relation to supply systems of water undertakers wholly or mainly in England will allow approximately 26,000 customers to potentially change their water supplier whereas the current threshold only allows approximately 2,200 customers to change their supplier.

7.3 Since the existing threshold is set out in the WIA, legislative change is necessary to change the threshold in the WIA.

## 8. Consultation outcome

8.1 The UK and Welsh Assembly Governments launched a public consultation on the recommendations of the Cave review between 17 September 2009 and 18 December 2009. Overall there were 53 respondents to the consultation and 23 responses to this issue. Of those who responded 16 (70%) were in favour of dropping the threshold and 7 (30%) were not. The respondents therefore generally supported the lowering of the threshold to 5 megalitres per annum. Those respondents who did not support the lowering of the threshold objected primarily to the timing of the proposed change and considered that the protocols and mechanisms for transferring customers would not be effective at this level. The economic regulator (Ofwat) is confident that the switching protocols will be effective at this level and has conducted further quality assurance testing of these arrangements.

## 9. Guidance

9.1 Under the WIA it is the responsibility of Ofwat to issue guidance as to the factors which are, or are not, to be taken into account in determining whether the premises of a customer fulfil the requirements for eligibility to switch supplier. The Secretary of State must approve any such guidance before it can be issued. The Secretary of State must also consult the Welsh Assembly Government prior to giving approval.

9.2 Ofwat issued guidance on eligibility in July 2007 and in January 2010 consulted on proposed changes to guidance to reflect the expected reduction in the threshold requirement.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is that those non-household customers using between 5 and 50 megalitres of water per annum and whose premises are supplied with water using the supply system of a water undertaker whose area is wholly or mainly in England would become eligible for switching. There are approximately 26,000 non-household premises that this would apply to (including public sector organisations). However, although these organisations would become eligible and we would only expect a small number of switches to take place, a wider range of facilitating reforms to the WSL regime are likely to be necessary to deliver the full benefits of the wider market structure.

10.2 The impact on the public sector is similar to that for business, charities or voluntary bodies.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

## 11. Regulating small business

11.1 The legislation does not apply to small business. Small and Medium sized enterprises will use much less than 5 megalitres of water per annum.

## 12. Monitoring & review

12.1 The Cave review recommended that the threshold should be reduced to 5 megalitres per annum at the earliest opportunity. The Cave review also recommended that the Government should consider abolishing the threshold requirement. The review further considered that Ofwat, in due course and as part of its statutory duty to assess the state of water markets, should advise the UK and Welsh Assembly Governments on whether it would be appropriate to abolish the threshold requirement.

## 13. Contact

13.1 David S Jones at the Department for Environment, Food and Rural Affairs Tel: 020 7238 5989 or e-mail: david.s.jones@defra.gsi.gov.uk can answer any queries regarding the instrument.