EXPLANATORY MEMORANDUM TO

THE WATER SUPPLY AND SEWERAGE LICENCES (CROSS-BORDER APPLICATIONS) REGULATIONS 2016

2016 No. 181

1. Introduction

1.1 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 These Regulations make provision about the treatment of applications for water and sewerage services licences that are forwarded to the Water Services Regulation Authority (Ofwat) by the Water Industry Commission for Scotland (WICS). The Scottish Government is making an order in parallel to cover applications that are forwarded to WICS by Ofwat.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 These Regulations set out provisions in relation to the development of a joint retail market in water services between England and Wales and Scotland as a result of the amendments to the Water Industry Act 1991 (the "1991 Act") by section 6 (*Arrangements with the Water Industry Commission for Scotland*) of the Water Act 2014 (the "2014 Act"). Section 7 (*Arrangements with the Water Services Regulation Authority)* covers the corresponding Scottish legislation.

4.2 Section 6 inserts a new provision into the 1991 Act which allows the Secretary of State to make regulations that would allow for an application to the Water Industry Commission for Scotland (WICS) for a water services licence or sewerage services licence to be also treated as an application for an equivalent water supply licence or sewerage licence respectively in England and Wales by Ofwat.

4.3 These licence applications would only cover retail or restricted retail authorisations (in Wales), which cover retail services such as billing, meter reading and other customer facing services. There are no provisions in Scottish law that would license activities similar to those allowed for in the wholesale, supplementary or disposal authorisations applicable in England and Wales. These authorisations allow the holder of the licence to either input water or take out wastewater from the networks of incumbent water

companies on behalf of customers, but such activities are not allowed under Scottish licences.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The 2014 Act will reform the water industry to help us face future challenges arising from a growing population and changing climate. The 2014 Act will amongst other things reform the water industry to introduce greater competition in the non-household retail market. This includes the objective of the development of a cross-border market across Great Britain in relation to water supply and sewerage retail services for eligible non-household customers.

7.2 In the past the 1991 Act put in place a framework for a limited retail market for water in England and Wales. Currently only customers that use 5 megalitres of water a year are eligible to switch their suppliers (50 megalitres in the areas of water companies mainly in Wales). In Scotland a less burdensome regulatory regime with no eligibility threshold has been in place since 2008 and has seen a number of non-household customers switch and many more customers benefit from lower charges and a wider range of services.

7.3 The reforms in the 2014 Act will bring the regime in England and Wales closer to the one in Scotland. The Water White Paper (*Water for Life*) announced that we would establish a larger market for retail water and sewerage services across England and Scotland (plus for those eligible customers in Wales) in partnership with the Scottish Government.

7.4 To support this, sections 6 and 7 of the 2014 Act will help create a joined up licensing system; with separate licences for the two regulators' jurisdictions being issued simultaneously following a single application to either regulator. This will help reduce administrative burdens for those wishing to provide services across the whole of Great Britain.

7.5 The regulations are technical in nature and largely mirror the provisions in the 2014 Act requiring the regulators to pass applications on to each other where an applicant has expressed a wish to enter both markets at the same time and certain conditions are fulfilled.

8. Consultation outcome

8.1 These reforms were originally included in the Water White Paper, which was published in December 2011, and included a commitment to legislate in a future Water Bill. The reforms in section 6 of the 2014 Act were included in the Draft Water Bill (clause 7), which was published in July 2012 and invited comments from

stakeholders but none were received on these reforms. The draft Bill was scrutinised, and consulted on, by the EFRA Select Committee through pre-legislative scrutiny.

8.2 In the draft Bill we committed to continue to refine our legislative proposals and to include new measures, including: *"If requested by the Scottish Government, provisions in the final Bill to change Scots Law in order to facilitate a seamless cross-border retail market for water and sewerage."* This was agreed with the Scottish Government and the Water Bill that entered Parliament in 2013 included the necessary clause.

8.3 Throughout all of this we have consulted with the Scottish Government, Ofwat and WICS on these reforms and draft Regulations. In 2015 Ofwat also consulted on these reforms as part of wider consultation around licensing and policy issues in relation to the opening of the non-household retail market.

9. Guidance

9.1 Ofwat published a consultation on its application process for water and sewerage licences on 29 January 2016. This includes a draft of Ofwat's licence application notice under section 17F of the 1991 Act, a draft licence application form and draft application guidance.

10. Impact

10.1 There will be no significant impact on business, charities or voluntary bodies. These reforms only apply to future licensees who wish to enter both markets at the same time and could potentially lead to some savings through reduced administrative burdens (e.g. completing one application pack rather than two and going through a single application gateway). There is no obligation on applicants to use the single gateway; they could instead opt to submit separate applications to both regulators at the same or different times.

10.2 The impact on the public sector is thought to be negligible (in terms of costs additional to the existing process), and would be fully recovered by the application fees.

10.3 An Impact Assessment was produced to cover all of the retail market reforms and updated following Royal Assent in May 2014. A copy is attached to this memorandum and it has been published alongside the 2014 Act on www.legislation.gov.uk.

11. Regulating small business

11.1 The Regulations will potentially reduce administrative burdens for all applicants that wish to enter both markets at the same time. However we do not expect that many small businesses would apply for licences because of the requirement to demonstrate their ability to perform the necessary regulatory obligations.

12. Monitoring & review

12.1 The Secretary of State must review the amendments made by the Regulations in relation to cross-border applications after five years and publish a report setting out the extent to which the Regulations have met their intended objectives and whether those objectives are still appropriate for legislation, and if so the extent to which they

could be achieved with less regulation. Subsequent reports must be published at intervals not exceeding five years.

12.2 The Government will also have regard to any review carried out by the Scottish Government. If for any reason the Scottish Government was to withdraw its Order it would be appropriate for the equivalent Regulations to be repealed.

13. Contact

13.1 For queries regarding this instrument please contact David Jones at the Department for Environment, Food and Rural Affairs. Telephone: 020 8026 3003 Email: david.jones@defra.gsi.gov.uk.