

# WATER INDUSTRY ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

17. Part I of the Act replaces and amends certain sections of the Water Industry Act 1991 (the 1991 Act). Relevant extracts from the 1991 Act are given towards the end of this note, in Annex A. Part II of the Act replaces and amends certain sections of the Local Government etc. (Scotland) Act 1994. Relevant extracts from this Act are given at the end of this note, in Annex B.

#### *Sections 1 & 2 and Schedule 1: Disconnection and restriction of supply*

18. *Section 1* of the Act amends section 61 of the 1991 Act. It removes water companies' powers to disconnect for non-payment of bills the supply of water to those premises set out in a new Schedule to the Water Industry Act 1991. (*Schedule 1* to this Act inserts a new Schedule 4A into the 1991 Act.) These are premises are private dwelling houses, caravans, houseboats, houses in multiple occupation and sheltered accommodation (where these are someone's main home) and children's homes, residential care homes, prisons and detention centres, schools, premises used for children's daycare, institutions of further and higher education, hospitals, nursing homes, GPs' and dentists' surgeries (including surgeries set up as primary care pilot schemes) and premises occupied by the emergency services (that is, police, fire and ambulance).
19. *Section 2* adds a new section to the 1991 Act (section 63A). It prohibits water companies from using devices designed to reduce the amount of water available for use (for instance, by using trickle valves) to enforce bill payment for those premises referred to in Schedule 4A.

#### *Sections 3 & 4: Charges schemes and agreements*

20. *Section 3* amends section 142 of the 1991 Act, so that charges for water and sewerage services for dwellings must be fixed on the basis set out in water companies' charges schemes rather than by agreement. An exception is made to allow agreements which have been entered into before this provision is brought into force to continue. *Section 4* amends section 143 of the 1991 Act, so that charges schemes must be approved by the Director General of Water Services (the Director) each year. The Director's power to approve charges schemes under section 143 (and the Secretary of State's power to make regulations under section 143A as inserted by section 5 of this Act) cannot be used to limit the total revenues available to water and sewerage undertakers from their charges schemes. Section 143 as amended also provides for the Secretary of State to give the Director guidance to take into account when approving schemes, and for the guidance to be published.

#### *Section 5: Regulations concerning charges schemes*

21. *Section 5* adds a new section to the 1991 Act (section 143A) which requires charges schemes for domestic customers to comply with any regulations made by the Secretary of State. Regulations could be used, for instance, to specify that particular tariffs or charging options be made available to consumers.

22. For those requiring special provision, the Secretary of State's regulations are intended to set out which groups of people are to be given special protection, and how eligibility for this protection should be demonstrated. These groups may include those who need special protection because of their age, health or financial circumstances, or due to disability. As well as prescribing those who should receive special treatment, the regulations will outline the nature of the assistance to be offered.

***Section 6: rights of consumers to elect for charging by reference to volume***

23. *Section 6* adds a new section (section 144A) to the 1991 Act. It covers homes which currently pay their water and sewerage bills on an unmeasured basis under a charges scheme. It gives these consumers a new right to require their water company to charge them by reference to volume (by sending their water company a 'measured charges notice'). Water companies would not have to install a meter where it would not be practicable or would be unreasonably expensive. Any dispute between the water company and the customer over whether installation of a meter would be impracticable or unreasonably expensive should be submitted to the Director General of Water Services. A company's charges scheme will set out the time within which the company will fit a meter and start charging the consumer by reference to volume. Tenants, other than those in fixed term tenancies of less than six months, will be able to exercise these rights irrespective of any term of their tenancy agreement which restricts or prohibits the exercise of these rights.
24. Section 144A enables consumers to revert to paying for their water on an unmeasured basis provided that they have not reverted previously, and that they, or a member of their household, were living in the property when the measured charges notice was issued. The request for reversion must be made within 12 months of the first day on which a measured basis of charging applied. If a consumer requests reversion to an unmeasured basis of charging, water companies must start charging on that basis 12 months after the consumer was first charged on a measured basis, or as soon as possible thereafter. Finally, where a consumer is paying for water on a measured basis, the section provides that the foul water drainage element of the sewerage services must be charged on the same basis.

***Section 7: restrictions on water companies' power to charge by reference to volume***

25. *Section 7* adds another new section (section 144B) to the 1991 Act. It will allow consumers to stay on an unmeasured charge unless certain conditions are met. It does this by prohibiting water companies from beginning to charge domestic customers on a measured basis unless:
- a consumer has requested or agreed to be charged on that basis (either by sending the water company a measured charges notice under section 144A, or agreeing to a suggestion from the company that charges be on a measured basis); or
  - the consumer has recently moved into the premises and has not yet received a water bill based on an unmeasured charge.

But for a consumer to benefit under section 144B, certain conditions must be satisfied. The Secretary of State may set out these conditions in regulations. The regulations might require, for example, that the consumer should not be using a garden sprinkler on the premises, or should not have water fittings which use considerable amounts of water.

***Section 8: charging by reference to rateable value***

26. Section 145 of the 1991 Act contained a deadline of 31 March 2000 after which rateable value could no longer be used as a basis for water charges. *Section 8* repeals section 145 which means that rateable value will still be one possible method of charging for water.

### ***Sections 9 & 10: metering***

27. *Section 9* amends section 148 of the 1991 Act so that consumers in private dwelling houses, who exercise their right to pay on the basis of volume, cannot be required to pay the water companies for installing water meters in their premises. *Section 10* amends section 162 of the 1991 Act. It ensures that water companies have the power to carry out works connected with meter installation (such as the installation of pipes), where they are needed to give effect to the provisions of the Act including cases where there is no immediate intention of using the meter as a basis of charging.

### ***Section 11: rights of tenants in relation to metering***

28. *Section 11* relates to the rights given by *section 6* in relation to metering. This section helps certain tenants, who might otherwise be prevented from exercising their entitlement to pay by reference to volume by conditions in their tenancy agreements. *Section 11* provides that no terms of any tenancy agreement of the types specified shall be regarded as restricting the tenant's rights (to give a measured charges notice and to consent to charges being fixed on a measured basis), preventing the consequent installation or connection of a meter or requiring consent to be obtained in relation to such installation or connection. The tenancies specified are those which are not fixed term tenancies for a term of less than six months.

### ***Section 12 and Schedule 2: Water Industry Commissioner For Scotland***

29. *Section 12* amends the Local Government etc. (Scotland) Act 1994 to establish the Commissioner and the three Consultative Committees. It dissolves the Customers Council and provides for the Transfer of Undertakings (Protection of Employment) Regulations 1981 to apply in relation to the staff of the Customers Council who transfer to work for the Commissioner.
30. *Schedule 2* sets out a new Schedule 9A to the 1994 Act. Part I of Schedule 9A provides for the appointment of the Commissioner and his staff and allows normal public sector pension arrangements to be made for them. The office of Commissioner will not have Crown status. Part II of Schedule 9A provides the broad framework within which the Consultative Committees will operate.

### ***Section 13 and Schedule 3, Part II: Commissioner's advice on charges***

31. *Section 13* amends the 1994 Act to give the Commissioner the function of advising Ministers about water and sewerage charges. He is to offer advice on the fixing of charges over a period of years to be specified in advance by Ministers. In preparing his advice he must take into account information relevant to the performance and service standards which the water and sewerage authorities have to meet in consequence of statutory requirements and government policies, the investment programmes necessary to deliver those standards and the scope for the authorities to secure efficiency savings. Ministers can accept or modify the Commissioner's advice, or substitute their own advice. This process will be transparent to the general public through provision requiring the Commissioner to publish his advice as accepted by ministers and any substituted advice.
32. The published advice will provide the framework within which the Commissioner will agree annual charges schemes with the water and sewerage authorities. In effect, the result of the process will be to establish limits for annual price increases over the period of years in question. Within this longer term framework approved by Ministers, the Commissioner will agree annual charges schemes with the water and sewerage authorities in the same way as the Customers Council does at present under section 76 of the 1994 Act.
33. These new arrangements will differ from the current system in two respects. First, in preparing his advice the Commissioner will be required to consider charge levels over a

number of years instead of one year at a time, as happens with the Customers Council at present. Secondly, the matters to be taken into account by the Commissioner in framing his advice, including matters of efficiency, will be specified (which they are not in respect of the Customers Council at present). The purpose of these changes is to assist the water and sewerage authorities to meet the needs of their customers as efficiently as possible by providing a stable business framework within which to make plans for future delivery of service.

34. *Schedule 3, Part II*, amends existing legislation in consequence of the creation of the Commissioner and the dissolution of the Customers Council. It applies mainly to the 1994 Act where the Commissioner will take over the role of the Council in connection with codes of practice, customer complaints and annual charges schemes. It also amends the Water (Fluoridation) Act 1985 to require the Commissioner, rather than the Council, to be consulted about proposals to introduce fluoride into water supplies in Scotland.

#### ***Section 14: application to Wales and Scotland***

35. *Section 14* provides that if an Order in Council is made under section 22 of the Government of Wales Act 1998 transferring functions of the Secretary of State set out in this Act to the National Assembly for Wales, the order will be subject to negative, rather than affirmative, resolution procedure. The section also provides that this Act is a ‘pre-commencement enactment’ for the purposes of the Scotland Act 1998 and so ministerial functions under this Act transfer to the Scottish Ministers by virtue of the provisions of the Scotland Act 1998.