

Draft Order laid before Parliament under section 17J(11) of the Water Industry Act 1991, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

WATER INDUSTRY, ENGLAND AND WALES

**The Water Supply Licence (Modification
of Standard Conditions) Order 2005**

Made - - - - *[] 2005*

Coming into force - - *1st December 2005*

The Secretary of State, in exercise of the powers conferred upon her by section 17J(6) of the Water Industry Act 1991(1), and having consulted the National Assembly for Wales, hereby makes the following Order, a draft of which has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 17J(11) of the Water Industry Act 1991:

Citation and commencement

1. This Order may be cited as the Water Supply Licence (Modification of Standard Conditions) Order 2005 and shall come into force on 1st December 2005.

Interpretation

2.—(1) In this Order—

“the Act” means the Water Industry Act 1991; and

“the Authority” means, until the coming fully into force of section 36(1) of the Water Act 2003(2) (transfer to the Authority and the Consumer Council for Water of functions, property etc) the Director, and thereafter, the Water Services Regulation Authority.

(2) Unless the contrary intention appears, any reference in this Order to a section is a reference to a section of the Act.

Specified percentages

3.—(1) The percentage specified for the purposes of section 17J(6)(b)(i) is twenty per cent.

(2) The percentage specified for the purposes of section 17J(6)(b)(ii) is twenty per cent.

(1) 1991 c. 56; section 17J was inserted by section 56 of, and paragraph 2 of Schedule 4 to, the Water Act 2003 (c. 37).
(2) 2003 c. 37.

Meaning of “weighted according to their market share”

4.—(1) For the purposes of section 17J(7), “weighted according to their market share” in relation to each relevant licence holder⁽³⁾ who has given notice of objection means weighted by attributing to that relevant licence holder a proportion equal to the total volume of water supplied by that relevant licence holder to the premises of customers during the relevant period divided by the total volume of water supplied by all relevant licence holders to the premises of customers during that period, such that the sum of all such proportions expresses the proportion to which section 17J(7) refers.

(2) For the purposes of this article—

- (a) “the relevant period” means the period of twelve months ending on the last day of the relevant month;
- (b) “the relevant month” means the last month before the relevant notice was given for which the Authority considers it reasonably practicable for all relevant information to be provided to it;
- (c) “the relevant notice” means the notice given under section 17J(3) in relation to the modifications in question; and
- (d) “relevant information” means information material to a determination of the total volume of water supplied by each relevant licence holder to the premises of customers during the relevant period.

[Name]

[Minister of State],

Department for Environment, Food and Rural
Affairs

[] 2005

(3) The expression “relevant licence holder” is defined for the purposes of section 17J by section 17J(13).

EXPLANATORY NOTE

(This note is not part of the Order)

The Water Industry Act 1991 (“the Act”), as amended by the Water Act 2003, requires water undertakers to grant licensed water suppliers access to their supply systems under certain conditions and for certain purposes. A retail licence permits a licensed water supplier to use a water undertaker’s supply system to supply water to eligible premises of customers. A combined licence additionally permits a licensed water supplier to introduce water into a water undertaker’s supply system in order to supply that water to eligible premises of customers.

The Act enables the Secretary of State, after consulting the National Assembly for Wales, to determine standard conditions in water supply licences. Once water supply licences have been granted, the Act permits standard licence conditions to be modified only in certain circumstances. Section 17J of the Act enables the Water Services Regulation Authority (and until it is fully established, the Director General of Water Services) (“Ofwat”) to modify standard licence conditions if certain conditions are fulfilled.

One such condition is that specified percentages of licence holders (by number or by market share) do not object to the modifications. Only certain holders of licences can object to certain modifications. Under section 17J(13) of the Act, these are known as “relevant licence holders”.

Article 3 of this Order specifies the relevant percentages. Modifications to standard licence conditions cannot proceed without a reference to the Competition Commission if objections are made by twenty percent or more of relevant licence holders measured by number or by market share.

Article 4 of this Order specifies how each relevant licence holder will be weighted for the purposes of measuring market share. For relevant licence holders who have given notice of objection, market share must be measured by reference to total volume of water supplied by them to the premises of customers during twelve months relative to the total volume of water supplied by all relevant licence holders to the premises of customers during the same period. Subject to certain conditions, Ofwat must determine when the end of the twelve month period will fall.

No regulatory impact assessment has been prepared in respect of this Order. A regulatory impact assessment in respect of the Water Act 2003 was prepared and placed in the library of each House of Parliament during the passage of the Water Bill. This included an assessment of the water supply licensing provisions. Copies can be obtained from Water Supply and Regulation Division, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE or from the Department’s website at www.defra.gov.uk/environment/water/legislation.