

WATER ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1

Water Industry

Chapter 2

Water and Sewerage Undertakers

Arrangements between relevant undertakers

Section 9: Main connections into sewerage systems

74. This section replaces existing section 110A of the WIA with a provision to regulate main connection agreements between a sewerage undertaker and “a qualifying person” (another sewerage undertaker or a person who has made an application to become an undertaker).
75. New section 110A allows Ofwat, on the application of one of the parties to the ensuing agreement, to make an order for a sewerage undertaker to permit a qualifying person to connect to its system under such terms and conditions as Ofwat specifies. As under current legislation, Ofwat can only make an order if it is satisfied that the main connection is necessary or expedient for the purposes of Part 4 of the WIA, (e.g. for the purposes of the provision of sewerage services) and where it is satisfied that the parties are unable to come to an agreement themselves. Before making an order, Ofwat must consult the appropriate environmental agency. An agreement imposed by order takes effect as an agreement between the parties and may therefore be enforceable by private law. It is also open to Ofwat to take action under section 18 to enforce its code about main connections agreements (see section 110C(3) to (5)). A main connection agreement includes one which was made of the parties’ own volition and one made or varied by order under section 110A or 110B (see below).
76. New section 110B applies similar provisions as under new section 110A when any party to a main connection agreement wishes to vary or terminate the main connection arrangement. Before varying or terminating the main connection arrangement, Ofwat must consult the appropriate environmental agency. New sections 110A and 110B disapply certain powers in the Competition Act 1998 in respect of main connection agreements.
77. New section 110C gives Ofwat a power to produce or revise one or more codes relating to main connection agreements in specific cases or more generally. These codes may set out standard or specific terms and conditions between the parties which may be mandatory or not; may include principles for determining what terms and conditions are suitable for particular main connection agreements, or more generally; and may also include the procedures for when a request to agree to make a main connection is received by an undertaker and steps to be taken to reach, amend or terminate an

agreement. Ofwat has a power of direction where it believes an undertaker is not acting in accordance with the codes. The direction is enforceable under section 18 of the WIA.

78. New section 110D outlines the procedures that Ofwat must follow when producing a code, including a requirement to consult. Ofwat must specify the consultation period in which consultees may comment. Within 28 days from the end of that consultation period, the Secretary of State or the Welsh Ministers may direct Ofwat not to issue the code or to amend it where a code relates to main connections between sewerage undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers may issue a joint direction if the code relates to main connections between sewerage undertakers wholly or mainly in England and sewerage undertakers wholly or mainly in Wales. The relevant minister may only use this power of direction once and only in relation to the first edition of the code.
79. New section 110E outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to a code are minor or urgent in nature and corresponds to what is explained in relation to section 40D.
80. New section 110F allows Ofwat to publish and revise rules about charges which may be levied by sewerage undertakers on qualifying persons under main connection arrangements. Ofwat is required to revise the rules, where necessary, if the Secretary of State or the Welsh Ministers issue revised charging guidance under new section 110J (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). Ofwat has a power of direction, enforceable by section 18, if it believes an undertaker is not acting in accordance with the charging rules.
81. New section 110G permits Ofwat's rules on charging to include provisions allowing a party to a main connection agreement to pay a reduced charge, for example when they or their customers take steps to reduce pressure on sewerage networks (for example by agreeing to introduce alternative infrastructure to deal with surface water during wet seasons, etc.). In accepting an application for a reduced charge, Ofwat may impose conditions on the parties to a main connection agreement, and rules may include requirements to notify Ofwat of the reduced charge. The rules may also include provision about passing on the reduction to customers.
82. New section 110H outlines the procedure Ofwat must follow before issuing rules on charges for main connection agreements, including a requirement to consult. In preparing the draft rules Ofwat must have regard to any charging guidance published by the Secretary of State or the Welsh Ministers (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). Ofwat must specify the consultation period in which consultees may comment. Within 28 days from the end of that consultation period, the Secretary of State or the Welsh Ministers may direct Ofwat not to issue the rules where the rules relate to main connections between sewerage undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers may issue a joint direction if the rules relate to main connections between sewerage undertakers wholly or mainly in England and sewerage undertakers wholly or mainly in Wales.
83. New section 110I outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.
84. New section 110J enables the Secretary of State and the Welsh Ministers to produce and revise charging guidance to Ofwat relevant to main connections between sewerage undertakers wholly or mainly in England or Wales respectively, or jointly in relation to main connections between sewerage undertakers wholly or mainly in England and wholly or mainly in Wales. The Secretary of State and the Welsh Ministers are required to consult each other and other appropriate persons on their draft guidance before it is published.