

# WATER ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 1

#### Water Industry

#### Chapter 2

#### *Water and Sewerage Undertakers*

#### **Arrangements between relevant undertakers**

#### *Section 8: Bulk supply of water by water undertakers*

61. This section replaces sections 40 and 40A of the WIA with provisions to regulate bulk water supply agreements between “the supplier” (a water undertaker) and a “qualifying person” (another water undertaker or a person who has made an application to become an undertaker).
62. New section 40 allows Ofwat, on the application of one of the parties to the ensuing agreement, to make an order for the supplier to make a bulk water supply to a qualifying person, and for that qualifying person to take it, under such terms and conditions as Ofwat specifies. As under current legislation, Ofwat can only make an order if it is satisfied that the bulk supply is necessary or expedient for securing the efficient use of water resources 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, in particular, on whether the proposed supply would secure an efficient use of water resources, in light of its effect on the environment. 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 bulk supply agreements (see section 40B(4) to (6)).
63. New section 40A applies similar provisions as under new section 40 when any party to an existing bulk supply agreement wishes to vary or terminate a bulk water supply arrangement. Before varying or terminating the bulk water supply arrangement, Ofwat must consult the appropriate environmental agency, again, in particular, on whether the proposed supply would secure an efficient use of water resources, in light of its effect on the environment. A bulk supply agreement includes one which was made of the parties’ own volition and one made or varied by order under section 40 or 40A. New sections 40 and 40A disapply certain powers in the Competition Act 1998 in respect of bulk supply agreements.
64. New section 40B gives Ofwat a power to produce or revise one or more codes relating to bulk supply 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 bulk supply agreements, or more generally; and may also include the procedures for when a request to agree to make a bulk supply is received by an

undertaker and steps to be taken to reach, amend or terminate an agreement. These codes must include a provision to require any parties that freely enter into a bulk supply agreement to consult the appropriate environmental agency. 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.

65. New section 40C outlines the procedures that Ofwat must follow when producing a code. This includes a requirement to consult the appropriate environmental agency and other appropriate persons on the content of the proposed code. 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 bulk supplies between undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers may issue a joint direction if a code relates to bulk supplies between undertakers wholly or mainly in England and 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.
66. New section 40D 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. The procedure in section 40C does not have to be followed in relation to such revisions, but notice provisions do apply. Minor changes to a code might include small changes which are uncontroversial or technical amendments (e.g. a change in contact details) while urgent changes might include revisions that are needed to protect consumers, public health or the environment. Urgent changes cease to have effect at the end of a period of six months following the issuing of the revision. The intention is that Ofwat would use this time to consult on making the revision permanent or to consider replacing it with an alternative revision that provides a more permanent solution to the issue that it was seeking to rectify.
67. New section 40E allows Ofwat to publish and revise rules about charges which may be levied by water undertakers on other qualifying persons under bulk supply agreements. 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 40I (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.
68. New section 40F permits Ofwat's rules on charging to include provisions allowing a party to a bulk supply agreement to pay a reduced charge when, for example, they or their customers take steps to reduce pressure on water resources (for example by agreeing to take less water during high peak periods or during droughts, etc.). Ofwat's rules may impose conditions on the parties to a bulk supply 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.
69. New section 40G outlines the procedure Ofwat must follow before issuing rules on charging, 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 bulk supplies between 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 bulk supplies between undertakers wholly or mainly in England and undertakers wholly or mainly in Wales. Ofwat may not publish the rules until this 28 day period has elapsed.

70. New section 40H outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.
71. New section 40I enables the Secretary of State and the Welsh Ministers to produce and revise charging guidance to Ofwat relevant to bulk supplies between undertakers wholly or mainly in England or Wales respectively, or jointly where the rules specifically relate to bulk supplies between undertakers wholly or mainly in England and undertakers 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.
72. New section 40J requires the supplying party under a bulk supply agreement to provide information about the water supplied under the agreement at the request of the Environment Agency or the Natural Resources Body for Wales. This could include the source or timing of the water supplied under the agreement.
73. This section applies to any bulk supply agreements including those made before the coming into force of this Act and those made voluntarily.

### ***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.

## **Agreements to adopt infrastructure**

### ***Section 10: Agreements by water undertakers to adopt infrastructure***

85. This section amends section 51A and replaces section 51B and 51C with provisions to regulate arrangements between a water undertaker and any person seeking to provide

water mains or supply pipes for eventual adoption by the water undertaker (section 51A agreements). These provisions apply when such a person makes an application to Ofwat for a determination. Such a person might be a developer constructing new premises that it wants connected to the water supply network or a pipe-laying company acting on a developer's behalf. Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes. An agreement affected by section 51A includes one which was made of the parties' own volition and one made or varied by order.

86. New section 51B allows Ofwat, on the application of a person wanting a water undertaker to adopt his mains or pipes, to make an order for future adoption containing such terms and conditions as Ofwat specifies. Ofwat may not force the adoption of mains or pipes by the undertaker if there is a contravention of any of the requirements of regulations made under section 74 of the WIA. An agreement imposed by order takes effect as an agreement between the parties and would therefore be enforceable by private law.
87. New section 51C applies similar provisions as under new section 51B when any party to an existing section 51A agreement wishes to vary or terminate the adoption arrangement.
88. New section 51CA requires Ofwat to produce a code relating to section 51A agreements. The code 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 section 51A agreements, or more generally; the circumstances in which it is appropriate for the person seeking adoption to carry out works instead of the water undertaker and may also include the procedures for when a request to agree 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 code. The direction is enforceable under section 18 of the WIA.
89. New section 51CB outlines the procedures that Ofwat must follow when producing a code, including a requirement to consult the DWI and other relevant persons. 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 and the Welsh Ministers may direct Ofwat not to issue the code or to amend it as per a direction. The Welsh Ministers' powers in this regard only relate to a code, or to so much of a code, that relates to arrangements with water undertakers wholly or mainly in Wales. The relevant minister can only use their power of direction once in relation to the first edition of the code.
90. New section 51CC 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.
91. New section 51CD allows Ofwat to publish and revise rules about charges which may be levied by water undertakers under section 51A agreements. Ofwat is also required to revise the rules, where necessary, if the Secretary of State or the Welsh Ministers issue revised charging guidance under new section 51CG (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.
92. New section 51CE outlines the procedure Ofwat must follow before issuing rules on charging, 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 section 38 of this Act which provides for further guidance on charging rules). 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 agreements to adopt infrastructure between water undertakers wholly or mainly in England or Wales respectively. Ofwat may not publish the rules until this 28 day period has elapsed.

93. New section 51CF outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.
94. New section 51CG enables the Secretary of State and the Welsh Ministers to produce and revise charging guidance to Ofwat relevant to agreements to adopt infrastructure between water undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers are required to consult each other and relevant persons on their draft guidance before it is published.

### ***Section 11: Agreements by sewerage undertakers to adopt infrastructure***

95. This section amends section 104 and inserts new sections 105ZA to 105ZI to regulate arrangements between a sewerage undertaker and any person seeking to provide sewers, drains or sewerage disposal works for eventual adoption by the sewerage undertaker (section 104 agreements). Such a person may be a developer constructing new premises that it would like to connect to the public sewerage system or a pipe-laying company acting on behalf of a developer. These provisions apply when such a person makes an application to Ofwat for a determination. Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes. An agreement affected by section 104 includes one which was made of the parties' own volition and one made or varied by order.
96. New section 105ZA allows Ofwat, on the application of a person wanting to make a section 104 agreement with a sewerage undertaker, to make an order containing such terms and conditions as Ofwat specifies. An agreement imposed by order takes effect as an agreement between the parties and would therefore be enforceable by private law.
97. New section 105ZB applies similar provisions as under new section 105ZA when any party to an existing section 104 agreement wishes to vary or terminate the adoption arrangement.
98. New section 105ZC requires Ofwat to produce a code relating to section 104 agreements. The code 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 section 104 agreements, or more generally; the circumstances in which it is appropriate for the person seeking adoption to carry out works instead of the sewerage undertaker and may also include the procedures for when a request to agree 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 code. The direction is enforceable under section 18 of the WIA.
99. New section 105ZD outlines the procedures that Ofwat must follow when producing the 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 as per a direction. The Welsh Ministers' powers in this regard only relate to a code, or to so much of a code, that relates to arrangements with 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.
100. New section 105ZE 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.
101. New section 105ZF allows Ofwat to publish and revise rules about charges which may be levied by sewerage undertakers under section 104 agreements. 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 105ZI (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.

102. New section 105ZG outlines the procedure Ofwat must follow before issuing rules on charging, 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 agreements to vest infrastructure in sewerage undertakers wholly or mainly in England or Wales respectively. Ofwat may not publish the rules until this 28 day period has elapsed.
103. New section 105ZH outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.
104. New section 105ZI enables the Secretary of State and the Welsh Ministers to produce and revise charging guidance to Ofwat relevant to agreements to vest infrastructure in sewerage undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers are required to consult each other and relevant persons on their draft guidance before it is published.
105. Subsections (4) and (5) amend sections 107 and 108 so as to prevent an undertaker circumventing a section 104 agreement. An undertaker might seek to circumvent an agreement by serving notice under section 107, which gives an undertaker a right to make a connection.

## **Arrangements for water undertakers to take water**

### ***Section 12: Arrangements for water undertakers to take water from other persons***

106. This section inserts Chapter 2B into Part 3 of the WIA. New section 66M provides the Secretary of State and the Welsh Ministers with powers to make regulations that would set in place provisions that confer functions on themselves and disallow Ofwat and the CMA from using powers in the Competition Act 1998 in respect to water supply agreements between undertakers and other persons.
107. Section 66N provides that the regulations may allow Ofwat to require a water undertaker to take a water supply from a relevant person and to require such a water supply agreement to be varied or terminated. The regulations must include provisions permitting Ofwat to make an order imposing, varying or terminating a water supply agreement only on an application by one of the parties and where they are unable to come to an agreement. The regulations may also require Ofwat to consult the appropriate environmental agency before imposing, varying or terminating a water supply agreement. The regulations may also include provisions outlining other circumstances when Ofwat may make an order.
108. Section 66O enables the regulations to provide Ofwat with powers to issue enforceable codes and charging rules to regulate water supply agreements and provide the Secretary of State or the Welsh Ministers with powers to issue guidance on the content of Ofwat's charging rules. The regulations may also make consequential changes to legislation.
109. New section 66P sets out the procedures the Secretary of State and the Welsh Ministers must follow when producing the regulations, including the bodies that they must consult before laying the draft regulations before Parliament or the Assembly.

## **Appointments and variations**

### ***Section 13: Procedure with respect to appointments and variations***

110. This section amends section 8 of the WIA by extending the list of persons that should receive notices as part of the application process where applying either to be a new undertaker or for a boundary between existing undertakers to be varied. Currently the list only consists of the local undertaker, the National Rivers Authority (NRA) and local authorities in the area proposed to be affected.
111. The section removes the name of the NRA from the list of consultees and adds the Environment Agency and the Natural Resources Body for Wales (the NRA's successor bodies). It also adds the Chief Inspector of Drinking Water for applications affecting the area of an undertaker whose area is wholly or mainly in England and the Chief Inspector of Drinking Water for Wales for applications affecting the area of an undertaker whose area is wholly or mainly in Wales.

## **Duty of CMA to refer mergers of relevant undertakers**

### ***Section 14: Exceptions to duty and undertakings in lieu of merger references***

112. This section inserts new provisions in the WIA to reform the special merger regime in sections 32 to 35 of the WIA. This regime currently requires the Competition and Markets Authority (CMA) to make a referral to the CMA Mergers Panel where there is a merger between undertakers where one or other of the parties to the merger has an annual turnover of £10 million or more. Under paragraph 3 of Schedule 4ZA to the WIA, on a merger reference under section 32, the CMA has to determine whether the loss of one or more undertakers (comparators) is going to have an impact on Ofwat's ability to regulate using comparative regulation.
113. New section 33A of the WIA states that the CMA may decide not to make a merger reference if:
  - in the case of an anticipated merger, the merger arrangements are not sufficiently advanced or are unlikely to proceed (for example if negotiations have stalled);
  - the merger (anticipated or otherwise) is not likely to prejudice Ofwat's ability to regulate (for example if one of the undertakers is not subject to comparative regulation or if it is not a suitable comparator); or
  - although the merger (anticipated or otherwise) is likely to prejudice that ability, the benefits to customers by allowing the merger outweigh the loss of a comparator (for example if the merger produces lower prices or higher quality services for the customer etc.).
114. The CMA must ask Ofwat for, and Ofwat must give, an opinion on the impact of the merger on Ofwat's ability to regulate and how that weighs up against potential customer benefits. In making this assessment, Ofwat must apply the methods set out in the statement of methods required under new section 33C. The Government's intention is that the statement should give acquiring undertakers and the CMA some certainty about whether a proposed merger (taking into account any undertakings proposed under new section 33D – see below) would prejudice Ofwat's ability to regulate and the likely impact of that prejudice. The CMA must consider Ofwat's opinion before coming to a decision.
115. New section 33D enables the CMA, having consulted Ofwat, to accept undertakings from parties to the merger for the purposes of remedying or mitigating the prejudicial impact of losing a comparator instead of making a merger reference. In carrying out these functions, the CMA must have regard to the need to achieve a comprehensive solution as possible to compensate for the prejudice resulting from the potential loss of a comparator. Undertakings may for example include continuing with separate price



limits, divestment of some or part of the business of the undertaker etc. The CMA may subsequently allow an undertaking to be varied, replaced or released if necessary at a later date should circumstances change etc, and must consider any representations made in relation to a change to an undertaking as soon as reasonably practicable. The CMA must not make a merger reference if it is considering whether to accept undertakings from the acquiring undertaker.

### ***Section 15: Exclusion of small mergers: advice of CMA on threshold***

116. This section introduces a duty on the CMA to keep under review, and advise the Secretary of State on, the turnover threshold at which, and conditions on which, any anticipated or actual mergers between undertakers become subject to the special merger regime.
117. The current threshold is set at £10 million and this is applied where the turnover of one or both undertakers is £10 million or more. The Government's intention is that the advice of the CMA will assist the Secretary of State in deciding whether to change the threshold and conditions using existing powers under section 33(7) of the WIA.

### **Relevant undertakers' charges**

#### ***Section 16: Charges schemes***

118. The section substitutes subsections (6) – (6C) for subsections (6) to (9) of section 143 of the WIA. This removes the requirement that undertakers' charges schemes do not take effect until approved by Ofwat. However, undertakers will be required to make their charges schemes in accordance with enforceable rules which Ofwat may produce under section 143B. There are additional requirements in section 143(6) that charges schemes must comply with. New section 143(6A) to (6C) require Ofwat to issue rules requiring undertakers to consult the Consumer Council for Water when producing and revising their charges schemes.
119. Subsection (2) inserts new sections 143B to 143E into the WIA. New section 143B describes the rules and section 143C sets out the process by which the rules are to be produced. 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 143D (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). also gives Ofwat a power of direction, enforceable under section 18 for when Ofwat thinks an undertaker is not acting in accordance with the rules. The direction might, for example, direct that schemes be replaced the following charging year or, if absolutely necessary, in year, or to take such other action as is appropriate – for example for the undertaker to conduct better research into its customer base.
120. New section 143B(7) reproduces the effect of the provision in previous section 143(9) that Ofwat cannot exercise this power for the purpose of limiting the total revenues of relevant undertakers from charges fixed by, or in accordance, with charges schemes.
121. New section 143C requires Ofwat to consult relevant persons on its rules in draft. In making the rules, Ofwat must have regard to guidance which the Secretary of State and the Welsh Ministers must produce on the content of Ofwat's rules (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 affect undertakers wholly or mainly in England or Wales respectively. The rules may not be published before these 28 days have elapsed.
122. New section 143D outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.

123. New section 143E permits the Secretary of State and the Welsh Ministers to produce charging guidance to Ofwat on charges for undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers are required to consult each other and relevant persons on their respective guidance.

***Section 17: Rules about charges for connections etc***

124. This section inserts new sections 144ZA to 144ZB into the WIA. New section 144ZA permits Ofwat to publish rules about charges which may be levied by water undertakers and sewerage undertakers for connections to, and the provision of, water mains, public sewers and some associated infrastructure. Ofwat is also required to revise the rules, where necessary, if the Secretary of State or the Welsh Ministers issue revised charging guidance under new section 144ZD (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). These rules replace certain existing provisions in the WIA relating to various financial requirements that may be imposed by a water undertaker in return for that undertaker carrying out its duties or obligations under the sections amended by sections 18, 19 and 20 of the Act. The rules may include charges that may be imposed, and methods for their calculation, as well as provision as to security that may be required. The section gives Ofwat a power of direction, enforceable under section 18 if Ofwat thinks an undertaker is not acting in accordance with the rules.
125. New section 144ZB requires Ofwat to have regard to ministerial guidance issued under section 144ZD and to consult relevant persons on its rules. 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 affect undertakers wholly or mainly in England or Wales respectively. The rules may not be published before these 28 days have elapsed.
126. New section 144ZC outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.
127. New section 144ZD requires the Secretary of State and the Welsh Ministers to produce charging guidance to Ofwat on charges imposed by undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers are required to consult each other and relevant persons on their respective guidance.

***Section 18: Charges for providing a water main etc***

128. This section makes several amendments to the WIA to allow for charging rules under new section 144ZA (inserted by section 17) to be the basis on which charges for new connections to an undertaker's water supply system are made.
129. Subsections (2) to (5) make changes to various provisions that allow a water undertaker to impose charges and require security in respect of things done under section 41 (duty to provide a water main), section 45 (duty to make domestic connections to a water main), and section 46 (duties to carry out ancillary works) so that the charges may be set in accordance with Ofwat's charging rules under section 144ZA Paragraph 54 to 57 of Schedule 7 to the Act repeal further related provisions including sections 43 and 43A which contain methods for calculating aspects of certain charges.

***Section 19: Charges for providing a public sewer etc***

130. This section makes several amendments to the WIA to allow for charging rules under new section 144ZA (inserted by section 17) to be the basis on which charges for new connections to an undertaker's sewerage system are made.
131. Subsections (2) to (5) make changes to various provisions that allow a sewerage undertaker to impose charges and require security in respect of things done under section 98 (duty to provide a sewer or lateral drain), section 101B (power to provide

lateral drains) and section 107 (right of the undertaker to undertake the communication with a public sewer) so that the charges may be set in accordance with Ofwat's charging rules under section 144ZA. There is a further amendment to section 146(5) to reflect the language of the new approach, and Schedule 7 to the Act repeals further related provisions including sections 100 and 100A which contain methods for calculating aspects of certain charges.

***Section 20: Charges for moving pipes***

132. This section amends section 185 of the WIA which imposes a duty on a relevant undertaker to move pipes etc in certain cases. Subsection (5) currently enables the undertaker to recover expenses reasonably incurred in carrying out the works from the person who required the work to be done. The section amends subsection (5) so that instead the person who required the work to be done must pay the undertaker any charges the undertaker imposes in accordance with charging rules under section 144ZA.

**Sustainable drainage**

***Section 21: Drainage systems relieving public sewers***

133. This section introduces a new section 114A of the WIA to confirm sewerage undertakers have the power to construct, maintain and operate drainage systems for the purpose of reducing the volume of surface water entering public sewers or the rate at which it does. The section also excludes drainage systems constructed under the section from the adoption duty imposed by Schedule 3 to the Flood and Water Management Act 2010.