

WATER ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1

Water Industry

Chapter 1

Water Supply Licences and Sewerage Licences

Expansion of water supply licensing

Section 1: Types of water supply licence and arrangements with water undertakers

37. This section replaces the existing section 17A of the WIA with a provision on the issue of water supply licences. New section 17A allows Ofwat to issue water supply licences which give the holder certain rights with respect to the water supply system and provision of water supply services to eligible premises in undertakers' areas in England and Wales. "Eligible premises" in these notes means premises that may be supplied under a retail or restricted retail authorisation as appropriate (see below).
38. Subsections (2) to (4) extend the concept of different authorisations for carrying out different activities under the water supply licence. The purposes of these authorisations are set out in paragraphs 1 to 8 of Schedule 2A, inserted by Schedule 1 to the Act – see below. The existing retail and supplementary authorisations are broadly retained for licensees using the supply system of an undertaker wholly or mainly in Wales, under the names "a restricted retail authorisation" and "a supplementary authorisation" respectively.
39. This section also introduces a new section 17AA into the WIA which outlines in subsections (1) and (2) the persons that Ofwat must consult before issuing licences with certain authorisations. The Government's intention is that these consultees can then make an assessment of whether the applicant is a suitable person for inputting water into the public supply system. This includes an obligation to consult the Chief Inspector of Drinking Water, the Environment Agency and the Natural Resources Body for Wales. It also includes an obligation to consult the Welsh Ministers on the appointment of licensees whose authorisations allow them to introduce water into the supply systems of undertakers wholly or mainly in Wales.
40. Subsection (3) of new section 17AA excludes water undertakers from holding a water supply licence, which means they must set up a company for example, to apply for a water supply licence if they want to enter the market.
41. The effect of subsections (4) and (5) of new section 17AA is to allow only limited companies to hold a water supply licence with a wholesale or supplementary authorisation. This allows these licensees to be subject to the special administration regime under sections 23 to 25 of the WIA should they become insolvent or fail to meet their statutory obligations where their supplies are designated as strategic under sections 66G and 66H of the WIA. This would allow for the continuation of essential

water services to customers if the limited company gets into difficulties (administration and by extension special administration is a mechanism for handling cases involving insolvent companies rather than bankrupt individuals, partnerships etc.).

42. This section also gives effect to Schedules 1 and 2. Schedule 5 separately enables the Welsh Ministers to commence the reformed regime in Wales.

Section 2: The supply system of a water undertaker

43. This section adds a new subsection (4A) to section 17B of WIA that extends the meaning of a water undertaker's "supply system" for the purposes of activities under a water supply licence in the areas of water undertakers wholly or mainly in England. The current definition only covers the mains and pipes of a water undertaker downstream of a water treatment works (often called the "potable" supply system) and discrete non-potable supply systems. This is extended to cover treatment works, reservoirs and other water storage facilities. This means that a water supply licensee with a wholesale authorisation will have more options to introduce water for the purpose of supplying premises. The existing definition for the supply systems used by undertakers wholly or mainly in Wales is retained.

Section 3: The threshold requirement

44. Currently under section 17A(3)(b) of the WIA, licensees may only supply to premises whose water consumption exceeds the threshold requirement set out in section 17D. In order to allow non-household customers more generally to switch to water supply by a licensee, the UK Government would expect to repeal this threshold for premises within the areas of water undertakers that are wholly or mainly in England at the same time as the introduction of the new water supply licensing arrangements. This would be done by commencing section 1 and Schedule 1 to the Act which would bring new Schedule 2A to the WIA into force. Section 1 substitutes all of section 17A and, under paragraph 7(b) of inserted Schedule 2A, only water supply licensees holding restricted retail authorisations (that is, those using the networks of water undertakers based wholly or mainly in Wales) would remain subject to the threshold requirement.
45. This would remain the case unless and until the new licensing arrangements were fully commenced in Wales, or paragraph 7(b) was otherwise repealed.
46. Under section 3, the power to repeal the threshold could also be exercised before the introduction of the new licensing arrangements by repealing section 17A(3)(b) of the WIA. This power would lie with the Secretary of State for premises in undertaker areas wholly or mainly in England and the Welsh Ministers in undertaker areas that are wholly or mainly in Wales. If section 17A(3)(b) was repealed in relation to undertakers wholly or mainly in Wales, paragraph 7(b) of Schedule 2A would also be repealed, thereby preventing it from ever coming into force.

Introduction of sewerage licences

Section 4: Types of sewerage licence and arrangements with sewerage undertakers

47. This section inserts a new section 17BA into the WIA introducing sewerage licences. Under this section Ofwat can issue sewerage licences which give the holder certain rights with respect to the sewerage system and provision of sewerage services to eligible premises in the areas of sewerage undertakers wholly or mainly in England.
48. Subsection (2) lists the different authorisations for carrying out different activities under the sewerage licence. The purposes of these authorisations are set out in paragraphs 1 to 7 of new Schedule 2B to the WIA (Schedule 3 to the Act).
49. Subsection (7) of new section 17BA defines the sewerage system of a sewerage undertaker as the system of public sewers, the facilities for emptying them and dealing

with their contents, and the lateral drains they must maintain, under the duty of a sewerage undertaker to provide a sewerage system to ensure its area is effectually drained – that is set out in section 94 of the WIA.

50. This section also inserts a new section 17BB into the WIA. Subsection (1) requires Ofwat to consult the Secretary of State, the Environment Agency and the Natural Resources Body for Wales before granting a sewerage licence with a wholesale authorisation or a disposal authorisation. The Government's intention is that consultees are given an opportunity to assess the suitability of the applicant to use the public sewer system.
51. Subsection (2) of new section 17BB excludes sewerage undertakers from holding a sewerage licence if it contains a retail authorisation or a wholesale authorisation, which means they must set up a company, for example, if they want to enter the retail or wholesale markets. Sewerage undertakers are, however, permitted to hold licences with disposal authorisations in order to encourage more trading of wastewater and sewage sludge between sewerage undertakers' areas.
52. The effect of subsections (3) and (4) of new section 17BB is to allow only limited companies to hold a sewerage licence with a wholesale or disposal authorisation. This allows these licensees to be subject to the special administration regime under sections 23 to 25 of the WIA should they become insolvent or fail to meet their statutory obligations where their services are designated as strategic under new sections 117N and 117O of the WIA (included within Schedule 4 to the Act). This would allow for the continuation of essential sewerage services to customers if the limited company gets into difficulties (administration and by extension special administration is a mechanism for handling cases involving insolvent companies rather than bankrupt individuals, partnerships etc.).
53. This section also gives effect to Schedules 3 and 4.

Application as regards Wales

Section 5: Water supply and sewerage licensing changes applied as regards Wales

54. This section would apply the new water supply and sewerage licensing arrangements to the areas of undertakers wholly or mainly in Wales as they apply to undertaker areas wholly or mainly in England. The Welsh Ministers have the power to bring Schedule 5 into force. Under paragraph 2 of Schedule 12 the Welsh Ministers can only exercise their power through an order under the affirmative procedure before the National Assembly for Wales. The amendments in Schedule 5 amend or repeal words of the WIA, as amended by other provisions in this Act, that prevent the new water supply authorisations and the new sewerage licences from applying to undertaker areas wholly or mainly in Wales.

Licensing arrangements between England and Wales and Scotland

Section 6: Arrangements with the Water Industry Commission for Scotland

55. This section inserts a new section 17FA into the WIA 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 a water supply licence or sewerage licence respectively in England and Wales. Such licences would only include retail or restricted retail authorisations as there are no provisions in Scottish law that would licence activities similar to those allowed for in the wholesale, supplementary or disposal authorisations applicable in England and Wales.

56. This section also inserts a new section 17FB into the WIA which requires Ofwat to forward applications for water supply or sewerage licences and associated information to WICS, subject to the requirements set out in subsection (2).
57. The intention behind the section is to assist in the development of a market across England and Scotland in relation to water supply and sewerage retail services for non-household customers and in Wales for eligible water supply customers.

Section 7: Arrangements with the Water Services Regulation Authority

58. This section amends the Water Services etc. (Scotland) Act 2005 (the 2005 Act) to introduce into Scots Law equivalent provisions to those under section 6.
59. This section inserts a new paragraph 1A into Schedule 2 to the 2005 Act which allows the Scottish Ministers to introduce, by order, provisions that would allow for an application to Ofwat for a water supply or sewerage licence to be also treated as an application for a water services or sewerage licences respectively in Scotland.
60. This section also inserts a new paragraph 1B into Schedule 2 to the 2005 Act which requires WICS to forward applications for water services or sewerage services licences, and associated information to Ofwat, subject to the requirements set out in sub-paragraph (2).

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.

Chapter 3

Regulation of the Water Industry

General duties of the Water Services Regulation Authority

Section 22: Primary duty to secure resilience

134. This section amends section 2 of the WIA which sets out "general duties with respect to the water industry". These duties apply both to the Secretary of State and the Welsh Ministers and to Ofwat in the exercise of their relevant regulatory responsibilities. This section introduces a new duty, which is to further the resilience objective.
135. Subsection (2DA)(a) explains that the resilience objective is to secure the long-term resilience of water supply and sewerage systems. It refers specifically to environmental pressures, population growth and changes in consumer behaviour.
136. Subsection (2DA)(b) explains that Ofwat will need to ensure that undertakers take action to make water and sewerage services to consumers resilient for the long term.
137. The section states that the action taken to secure resilience can include promoting long-term planning and appropriate investment, increasing efficiency in the use of water, and the use of a full range of appropriate measures to manage water resources. Appropriate measures would include action to reduce consumer demand and to ensure the effective management of water resources within the water environment.

138. Subsection (2DB)(a) defines supply systems by reference to the new section 17B while subsection (2DB)(b) defines sewerage systems.

Section 23: General duty as regards undue preference in the provision of services

139. This section inserts new subsection (ba) to section 2(3) of the WIA which imposes a general duty on the Secretary of State, the Welsh Ministers and Ofwat to carry out their functions with a view to securing that undertakers do not show any undue preference or undue discrimination in favour of (in particular) their own retail businesses, associated licensees or other undertakers in the provision of services for licensees, inset appointees or other undertakers.
140. Undue preference might be demonstrated by an undertaker, for example, where it prioritises enquiries from its own end-user customers or from its subsidiary licensee over those from another licensee or undertaker. Undue discrimination might involve an undertaker placing different information requirements on unassociated licensees or other undertakers that it would not normally require from its own retail business or subsidiary licensee. This would in effect give the undertaker's own business interests a competitive advantage over others that are operating in the same market.

Section 24: Strategic priorities and objectives

141. This section replaces the current section 2A of the WIA with a new power enabling the Secretary of State to publish a statement setting out strategic priorities and objectives for Ofwat in relation to appointment areas wholly or mainly in England. Currently, section 2A provides the power under which the Social and Environmental Guidance (SEG) to Ofwat is issued; Ofwat must have regard to this guidance. The new section 2A establishes that Ofwat must carry out its relevant functions in accordance with the statement published by the Secretary of State.
142. The section creates a new power allowing for the production of a single consolidated statement of the Government's priorities for Ofwat. This will allow for future iterations of the current Strategic Policy Statement incorporating the SEG to be produced under a single power.
143. Subsection (3) requires the Secretary of State when producing the statement to have regard to Ofwat's duties under section 2 of the WIA. These include, for example, duties to:
- protect consumers;
 - have regard to the interests of vulnerable groups;
 - ensure that the functions of water and sewerage companies are performed properly and that the companies are able to finance those functions;
 - further the resilience objective;
 - contribute to the achievement of sustainable development.
144. The section also specifies that the Secretary of State must have regard to social and environmental matters. This duty will require the Secretary of State and the Welsh Ministers to set out strategic priorities and objectives for Ofwat on the matters previously covered by the Social and Environmental Guidance.
145. Subsections (4) to (8) set out requirements for consultation and parliamentary scrutiny of the statement.
146. The new section 2B sets out similar powers for the Welsh Ministers to publish a statement setting out strategic priorities and objectives for Ofwat in relation to appointment areas wholly or mainly in Wales.

147. The section provides for an amendment to section 192A of the WIA such that Ofwat will need to include in its forward work programme an explanation of how projects included in it reflect priorities and objectives published under section 2A or 2B.

Regulation of relevant undertakers, water supply licensees and sewerage licensees

Section 25: Procedure for granting water supply and sewerage licences

148. This section amends section 17F of the WIA by making new provision about the procedure for Ofwat to grant water supply and sewerage licences. Currently the procedure for the issue of water supply licences is set out in regulations by the Secretary of State. Under the new provisions Ofwat will determine the procedure, including any fees payable, and publish it in a notice.
149. This section also revokes a requirement on applicants that wish to apply for a licence to publish a notice of their application.

Section 26: Extension of time limit for imposing financial penalties

150. This section amends section 22C of the WIA by increasing the limitation from twelve months to five years for the Secretary of State, the Welsh Ministers or Ofwat to impose a civil financial penalty on an undertaker or licensee for an historic breach of an appointment or licence condition or a relevant statutory obligation. It remains the case that the time limit for imposing a penalty does not apply if a formal notice has been served on the person on whom the penalty is to be imposed, before the end of the limitation period. The provision ensures that the extended time limit does not apply to a contravention occurring prior to the section coming into force.

Section 27: Water resources management plans for England: resilience

151. This section adds a new section 37AA to the WIA which provides that the Secretary of State may give directions to water undertakers about the basis on which a water resources management plan is to be prepared. The direction can only be given with a view to securing the ability of the water undertaker to meet the need for the supply of water to consumers. The direction can require that a plan be prepared on the basis of certain assumptions around resilience and security of supplies in drought and may be related to the risk of certain weather events arising, the frequency of customer restrictions or other bases for describing resilience, such as water security margins. The provision applies to the Secretary of State in respect of water undertakers whose areas are wholly or mainly in England.

Section 28: Frequency of water resources management and drought plans

152. This section amends sections 39B of the WIA to change the frequency of drought plans to a maximum five yearly cycle in keeping with water resources management plans. Where there is a duty to prepare a revised plan within the five year time limit, this means the revised plan must be prepared and published within the five years (in accordance with the procedure in section 37B of the WIA).
153. The section inserts new subsections (4) to (9) in section 37D to empower the Secretary of State in respect of undertakers wholly or mainly in England, or the Welsh Ministers in respect of undertakers wholly or mainly in Wales, to amend the planning timeframes for water resources management plans. This can only be done by order using the negative resolution procedure. The Secretary of State's and the Welsh Ministers' powers here can be exercised in the same statutory instrument. New section 39D makes the same arrangements for drought plans.

Section 29: Standards of performance: water supply

154. This section inserts new sections 38ZA and 39ZA into the WIA giving the Secretary of State or the Welsh Ministers powers to set standards of performance relating to water supply services provided by water supply licensees wholly or mainly in England or Wales respectively. Currently the powers in section 38 of the WIA only apply to services provided by water undertakers. The Welsh Ministers may make provisions relating to licensees operating in the undertakers' areas wholly or mainly in Wales under a restricted retail authorisation. Standards of performance, which are prescribed in secondary legislation, are the minimum levels of service, for example in terms of quality and timeliness, that water suppliers must provide to their customers in the normal course of business or when things go wrong. The secondary legislation may also include provision as to the level of payment that customers must receive if the prescribed standards of performance are not met. The section also amends section 38A of the WIA (information as to levels of performance which must be supplied to Ofwat) to extend that section to water supply licensees.

Section 30: Standards of performance: sewerage

155. This section makes the same provision in relation to sewerage services provided by sewerage licensees as is made by section 29 in relation to water supply services provided by water supply licensees by inserting new sections 95ZA and 96ZA and amending section 95A. Schedule 5 extends the provision to the Welsh Ministers when sewerage licensing is commenced for Welsh undertaker areas.

Section 31: Interim duty: water supply

156. This section replaces section 63AC with new sections 63AC to 63AF to introduce a new power for Ofwat to direct one or more water supply licensees to take on some or all of the customers of a licensee that exits the market. If Ofwat does not exercise this power, the customers would revert back to the local water undertaker.
157. Where a customer reverts back to an undertaker, the undertaker cannot terminate the supply for a period of three months or until the customer makes a more permanent arrangement with that undertaker, another undertaker or with a different licensee. An undertaker may refuse to make an interim supply should making that supply put at risk its ability to meet existing and future water supply obligations. The undertaker's decision may be referred to Ofwat for a determination if the customer disagrees with that decision.
158. Where Ofwat orders a licensee to take on the supply, the supply is to be treated as having been supplied by the licensee since the other licensee exited the retail market so that there is minimum disruption to the customer and the undertaker must recoup its supply costs from the appointed licensee. There is an "opt out" for the licensee from a proposed direction in section 63AC(5)(b) which it may use if, for example, it does not have the capacity. All licensees that elect to participate in the interim water supply regime must make a scheme for determining the default terms and conditions that will apply to the interim supply. Ofwat may issue a direction about the default terms and conditions that must be included in the licensees' schemes. These directions are enforceable under section 18 of the WIA. Licensees and customers may agree their own particular terms and conditions. The licensee can, through a code produced by Ofwat, be required to tell the customer about the default terms and conditions before the licensee and customer make an agreement.

Section 32: Interim duty: sewerage services

159. This section introduces a new section 110K into the WIA that allows undertakers' customers to notify them that they no longer want to be provided with sewerage services by the undertaker and instead are to be served by a sewerage licensee. This is the sewerage equivalent of sections 63AA and 63AB. The notice will specify the time at

which the transfer will occur and must allow at least 2 working days' notice (so that in metered premises the undertaker can arrange for the meter to be read). Once the undertaker no longer serves a customer, its duty to provide services is interrupted until the customer applies to be served again by the undertaker or the undertaker is required to serve the customer because of the interim duty in section 110L (see below).

160. This section also inserts new sections 110L to 110O into the WIA which provide for customers to revert back to the local sewerage undertaker when a sewerage licensee exits the market. The undertaker must continue to provide the service until the customer makes a new long-term arrangement with a licensee or another sewerage undertaker (i.e. where the premises are in the appointed area of one undertaker but are connected to the sewerage system of a different undertaker). Ofwat can alternatively direct one or more sewerage licensees to take on some or all of the customers of the exiting licensee.
161. Where Ofwat orders a licensee to take on the supply or where the customer chooses its own licensee, the supply is to be treated as having been supplied by that licensee since the original licensee exited the retail market so that there is minimum disruption to the customer and the undertaker must recoup its supply costs from the new licensee. There is an "opt out" for the licensee from a proposed direction in section 110L(5) (b) which it may use if, for example, it does not have the capacity. All licensees that elect to participate in the interim sewerage service regime must make a scheme for determining the default terms and conditions that will apply to the provision of the interim service. Ofwat may issue a direction about the default terms and conditions that must be included in the licensees' schemes. These directions are enforceable under section 18 of the WIA. Licensees and customers may agree their own particular terms and conditions. The licensee can, through a code produced by Ofwat, be required to tell the customer about the default terms and conditions before the licensee and customer make an agreement.

Section 33: Notice of agreements within section 142(2)(b)

162. This section adds new subsections (6A) and (6B) to section 142 of the WIA. An undertaker will be required to notify Ofwat when it makes an individual charging agreement with a customer that is not covered by a charges scheme. Such agreements tend to be made between undertakers and large users of water but could be made for any non-household arrangements not covered by undertakers' charges schemes. This reporting requirement will be enforceable by Ofwat under its section 18 powers. The section also amends section 195 of the WIA to require such notified information to be included on Ofwat's register for public inspection in relation to agreements made after the coming into force of this section. This is subject to any direction given by the Secretary of State or the Welsh Ministers in relation to, for example, commercially sensitive information.

Section 34: Register relating to undertakers and licensees

163. This section amends section 195 of the WIA to require Ofwat to enter information into its register of regulatory actions. Ofwat is required to publish notices of any agreements to reduce charges payable in relation to bulk supply agreements, main connection agreements and water supply and sewerage licensing agreements.

Section 35: Operation of register

164. This section replaces section 195(4) to (6) of the WIA with new subsections (4) to (4B). The effect is to remove the powers of the Secretary of State and the Welsh Ministers to specify by order the times at which Ofwat's register of regulatory actions must be made available for inspection and the fees that are payable to Ofwat for inspection and for any copies of the papers contained in the register. Instead, Ofwat is to publish a notice setting out how the register is to be accessed.

Section 36: Obtaining information for enforcement purposes

165. This section amends section 203 of the WIA to extend current powers to demand information. Under the current section 203 the appropriate Minister and Ofwat can demand information from any person about potential contraventions by water and sewerage undertakers of their or others' appointment and licence conditions or other statutory requirements enforceable under section 18 of WIA.
166. This section extends the subjects on which information can be demanded by Ofwat and the Minister to situations where an undertaker is causing or contributing to a contravention by another undertaker, or where a licensee is causing or contributing to a contravention by another licensee of appointment or licence conditions or other statutory requirements enforceable under section 18 of WIA. Information can also be demanded about both undertakers' and licensees' compliance in individual cases with the prescribed standards of performance relating to water supply and sewerage services.

Appeals relating to codes

Section 37: Appeals relating to revisions of codes

167. This section inserts new sections 207A to 207C into the WIA giving the Secretary of State the power to make regulations providing for appeals to the CMA against an Ofwat decision to revise a code under the Act (such as the codes under sections 40B and 110C) or part of a code under the Act that has been designated in the regulations.
168. The regulations must set out the method the CMA will adopt in deciding whether to determine an appeal and the grounds on which an appeal may be made. Further procedural provisions that may be included in the regulations are in section 207C and new Schedule 16 to the WIA (see Schedule 6 below).

Guidance relating to rules about charges

Section 38: Guidance relating to rules about charges

169. This section adds new sections 144ZE and 144ZF to the WIA which are about the Secretary of State and the Welsh Ministers issuing and revising high level guidance in relation to Ofwat's charging rules made under provisions of the WIA inserted by this Act. In particular, section 144ZE places a requirement on the Secretary of State and the Welsh Ministers to issue and keep under review guidance on the principles to be applied by the Authority in determining the provisions of the rules about charges to undertakers' customers and between undertakers and licensees in the reformed markets. This guidance will set the framework within which Ofwat must set the charging rules which are binding on undertakers. The guidance must be appropriately consulted on and laid before Parliament or, if appropriate, the National Assembly for Wales. This gives Parliament or the Assembly the ability to scrutinise the relevant government's approach to charging guidance to Ofwat and to resolve, within a 40 day period, that the guidance should not be issued.

Adjudication functions

Section 39: Exercise of adjudication functions by other persons

170. This section creates a new power for the Secretary of State in relation to Ofwat's adjudication functions, listed in new section 207D. Currently, the WIA identifies a number of matters upon which Ofwat has a statutory duty to make a formal determination in cases of dispute between customers and the water and sewerage companies. This includes end-user customers, parties seeking connections to a sewer or a water main, parties applying for or seeking to vary a consent to discharge trade effluent and parties with a complaint about the exercise of works powers on private land.

171. This section allows the Secretary of State and the Welsh Ministers to make an order allowing any of the relevant functions to be performed by a specified party other than Ofwat; or by either Ofwat or another party at Ofwat's discretion. The relevant functions are set out at subsection (4) of new section 207D which clarifies that this power covers specified functions and does not extend to Ofwat's enforcement powers under section 18 of the WIA.
172. This section will enable the introduction of greater flexibility into the system for dispute resolution in order to enable routine disputes to be resolved in a timely manner and to allow for the development of expertise in relation to specific classes of dispute. Ofwat will be responsible for setting the regulatory framework within which the adjudication functions are performed. Subsection (2) provides that the order can require Ofwat to produce guidance as to how an adjudicator must exercise the relevant function. It also provides that the person exercising the function can be required to take account of any guidance to which Ofwat is itself subject.

Drinking water inspectorate

Section 40: Charging of fees by assessors for the enforcement of water quality

173. Subsection (1) of this section adds a new section 86A of the WIA which allows the Secretary of State to confer power on the Chief Inspector of Drinking Water to charge fees to water companies for the costs of regulatory activities undertaken by the Drinking Water Inspectorate. It replaces a similar power conferred by section 4 of the Public Bodies Act 2011 which was time limited. There are equivalent powers for the Welsh Ministers to make such orders.
174. Subsection (2) of the section repeals the relevant provisions of the Public Bodies Act 2011.

Provision of public sewers: premises in Wales

Section 41: Disputes about the provision of public sewers: premises in Wales

175. This section amends section 101A of the WIA so as to make provision about the determination of disputes about the provision of a public sewer in Wales. Under section 101A, owners or occupiers of properties served by private sewerage treatment systems that are not connected to a public sewer may apply to the sewerage undertaker for the area where the premises is located for connection to a public sewer under the conditions prescribed by section 101A.
176. The undertaker must decide whether it believes it has a duty to provide a public sewer. If the sewerage undertaker and the owner or occupier do not agree about there being a duty or other specified matters, the dispute resolution provisions of section 101A apply.
177. In Wales, the dispute determination role now rests with the Natural Resources Body for Wales. The section gives that role to the Welsh Ministers, or a person they appoint, and requires the Natural Resources Body for Wales to advise the parties and the person determining the dispute, if asked. Because of the Natural Resources Body for Wales' role, the section provides for persons appointed to determine disputes to be independent of the Natural Resources Body for Wales.

Chapter 4

Retail Exit: Non-Household Premises

Section 42: Retail exit: non-household premises

178. **Section 42** enables the Secretary of State to make regulations ("exit regulations") to allow an undertaker whose area is wholly or mainly in England to apply to exit the non-household retail market for that area. The regulations could include provisions about

determining an exit application, for transferring the relevant non-household business to an eligible licensee or licensees and about the operation of a retail exit area after the exit has taken place. The regulations could require an undertaker to exit both the water and sewerage retail markets at the same time. The regulations could also include provisions for protecting the household and non-household customers affected by the exit.

179. Subsections (4) and (5) of section 42 allow exit regulations to set out the functions that would be affected by retail exit and what undertakers would therefore be prohibited from doing in an area affected by retail exits.

Section 43: Application for retail exit

180. **Section 43** allows exit regulations to set out the procedure for an application for retail exit (an “exit application”). The regulations would have to require the relevant undertaker to apply to the Secretary of State when making an exit application. This would mean that the Secretary of State could refuse permission for an undertaker to exit. This section also includes a non-exhaustive list of other procedural matters that might be included in the regulations, such as who must be consulted before making an exit application, the grounds for the Secretary of State to refuse the application and conditions that may be imposed by the Secretary of State before granting an exit application.
181. The grounds on which an application can be refused under the regulations might include the public interest, the interests of non-household customers or other customers, the costs associated with transferring part of the relevant undertaker’s undertaking and grounds relating to the licensee to which part of the undertaking will be transferred. For example, this might include the licensee’s share of the relevant market or the licensee’s capacity to take on the relevant customers.
182. The regulations may provide for the Secretary of State to impose conditions, for example, to ensure that customers are protected following an exit application, for example by requiring the sharing of proceeds from a transfer, or that customers are no worse off as a result of the exit.
183. Subsection (5) could be used to leave types of premises or customers, such as premises about to be demolished or customers on the point of moving to a new provider, out of the retail exit process. Regulations under subsection (6) about disclosing information could be used to help ensure that the same or similar charging arrangements are available to customers after a retail exit happens.

Section 44: Eligible licensees

184. **Section 44** allows exit regulations to require a relevant undertaker to specify in its exit application the eligible licensee or licensees to which it proposes to transfer part of its undertaking. The regulations may also allow Ofwat to direct one or more eligible licensees to accept a transfer. Regulations under subsection (3) would give an eligible licensee an opportunity to opt out in a particular case.
185. An “eligible licensee” would be a licensee that, first, has a water supply licence with a retail authorisation; a sewerage licence with a retail authorisation; or both; and, secondly, has elected to be an eligible licensee. This is because there may be licensees that do not wish to take on so many customers at once and they may therefore elect not to be an “eligible licensee”.
186. The regulations could also make provision for Ofwat to publish a code about eligibility and how it conducts assessments on whether a licensee is an eligible licensee, with which Ofwat must comply when making these assessments. It would also be possible for exit regulations to make provision about transfers from a relevant undertaker to an eligible licensee that is associated with it.

Section 45: Transfer of undertaking

187. **Section 45** allows exit regulations to provide for a scheme for transferring property, rights and liabilities where an exit application has been granted. A transfer scheme would need to deal with charges to undertakers' non-household customers, previously covered under Chapter 1 of Part 5 of the WIA. The scheme could treat a liability to pay under statute as being a liability under an agreement.

Section 46: Operation of retail market

188. **Section 46** allows exit regulations to include the following provision:
- provision that requires an undertaker to impose on the licensee charges that enable the licensee to fulfil its obligations under the agreements transferred from the undertaker;
 - provision that requires a water supply or sewerage licensee providing services under its licence in a retail exit area to provide specified services. These might, for example include, functions relating to the interim duties in section 63AC or 110L (amended by section 31 and inserted by section 32);
 - provision that requires the agreement between an undertaker and the water supply or sewerage licensee to be such as would enable the licensee to carry out specified services imposed on it;
 - provision about the functions of a relevant undertaker in relation to a retail exit area, which may include modifying or disapplying the undertaker's interim duty to provide water or sewerage services;
 - provision that applies the special administration regime in certain circumstances to a licensee providing services in a retail exit area, which might mean, for example, that the special administration regime would affect licensees that had a significant share of the market;
 - provision that requires relevant undertakers and licensees to provide certain specified information to customers, Ofwat, or the Secretary of State; and
 - provision that requires Ofwat to record certain information in its public register.

Section 47: Operation of retail market: charges etc

189. **Section 47** allows exit regulations to require licensees to produce schemes containing terms and conditions that would apply to transferred customers in the absence of agreed terms and conditions. This would enable a form of ongoing price regulation of licensees to be introduced where customers are transferred to licensees where they have not chosen to switch to one.
190. The regulations would be able to provide for the schemes to make different provision for different purposes or areas; for publication of the schemes; and for the licensees to send a copy of the schemes to Ofwat. The regulations could also allow Ofwat to direct that the terms or conditions be modified and require the licensee to comply with this direction. This might include making such a direction enforceable under section 18 of the WIA.
191. The regulations could also require Ofwat to issue a code about providing services. This code could include provisions about the terms and conditions contained in the scheme; provision for licensees to inform customers about the schemes before they agree to other terms and conditions; provision allowing Ofwat to direct the licensee to act in accordance with the code if it is not doing so; and for the direction to be enforceable under section 18 of the WIA.

192. The regulations could also allow Ofwat to issue and enforce rules about the charges that a licensee might impose in relation to a retail exit area and, where relevant, rules about the schemes. The regulations may provide for the rules to make different provision for different purposes or areas; for Ofwat to direct a licensee to comply with the rules; for the directions to be enforceable by Ofwat; for the Secretary of State to issue guidance on the content of the rules; and for the Secretary of State to veto the rules so that Ofwat has to change them. These provisions broadly mirror the arrangements for undertakers producing charges schemes in accordance with rules produced by Ofwat under section 143 of the WIA (as amended by section 16 of this Act).

Section 48: Exit applications: further provision

193. **Section 48** allows exit regulations to control what a relevant undertaker's conditions of appointment say about making exit applications. In particular, the regulations may prevent the inclusion of a provision that would require a relevant undertaker to make an exit application. The regulations could also include a requirement for Ofwat or the CMA to seek the Secretary of State's consent before exercising their functions in a way that might require a relevant undertaker to make an exit application.

Section 49: Modification of appointment and licence conditions

194. **Section 49** provides that the regulations may allow Ofwat to modify the appointment conditions of a relevant undertaker or the licence conditions of a water supply or sewerage licensee where this is necessary or expedient in consequence of a transfer of a part of the undertaker's undertaking to the licensee. This might be because an undertaker is no longer required to carry out a particular function in the area. It is intended that modifications would be made more easily than the provisions of the WIA would allow.
195. The regulations may also allow Ofwat to make consequential changes following these modifications. They might require Ofwat to obtain the Secretary of State's consent to a modification and might set the time period during which modifications can be made. The time period could not exceed one year after the transfer has taken place.

Section 50: General directions

196. **Section 50** enables exit regulations to permit the Secretary of State to publish a statement from time to time with general directions for Ofwat and the CMA. The general directions would affect functions that could be used to secure that a relevant undertaker makes an exit application.
197. The regulations might require the Secretary of State, when drafting the statement, to have regard to Ofwat's duties under section 2(1)(b) of the WIA, the general duties of the CMA, the protection of consumers and any other matters as the Secretary of State sees fit. The regulations might also require the Secretary of State, before publishing the statement, to consult and the statement is subject to a negative resolution procedure.

Section 51: Exit regulations: general

198. This section allows for exit regulations to provide for duties and powers of various persons to be modified and added to. It also allows regulations to amend or repeal provisions in Acts (including Acts or Measures of the Assembly). It also allows the regulations to make provision conferring powers to make subordinate legislation.

Section 52: Interpretation

199. This section defines certain terms used in Chapter 4 of Part 1.

Section 53: Procedure

200. Section 53 makes provision for consultation before exit regulations are made, and for the affirmative procedure to apply to exit regulations.

Chapter 5

Miscellaneous

Section 54: Consumer redress

201. This section allows Ofwat to make changes to water undertakers' and sewerage undertakers' conditions of appointment, and water supply licensees' and sewerage licensees' licences, to include conditions relating to the provision of a consumer redress scheme. The consumer redress scheme itself is in the process of development by the water sector, Ofwat and the Consumer Council for Water.
202. The section lays out who Ofwat must consult before making a modification and states that the Secretary of State or the Welsh Ministers may veto such a modification.

Section 55: Modification of appointment and licence conditions

203. This section provides Ofwat with a time limited power to make changes to undertakers' conditions of appointment and water supply and sewerage licence conditions in order to implement changes made in Part 1 of this Act, including related provision made under sections 90 and 91 (consequential and transitional provisions). The changes are expected to relate mostly to the changes in water supply licensing and the introduction of the new sewerage licensing regime. Before making changes Ofwat must consult the holder of the appointment or licence, the Secretary of State, the Welsh Ministers and other appropriate persons.
204. Subsection (8) provides the Secretary of State and the Welsh Ministers with the power to give directions to Ofwat in order to ensure that both appointment conditions and licence conditions are modified in order to implement the changes in Part 1 of the Act and subsection (9) contains a ministerial veto for modifications. Subsection (11) sets out the cases in which the Secretary of State may exercise these powers and when the Welsh Ministers may. The exclusive competence of the Secretary of State as regards licensees reflects the split of responsibilities at the time of Royal Assent.

Section 56: Further amendments

205. This section introduces Schedule 7 to this Act which makes further amendments to the WIA that deal with subjects similar to the rest of Part 1.