

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

*These notes refer to the Water Act 2014 (c.21)
which received Royal Assent on 14 May 2014*

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.

Part 2

Water Resources

Section 57: Report on water abstraction reform

206. This section places a duty on the Secretary of State to report to Parliament on progress on the arrangements for water abstraction reform in England. The section requires the report to be laid before Parliament within 5 years of Royal Assent to this Act.

Section 58: Withdrawal of compensation for undertakers

207. This section modifies section 61 of the WRA (compensation where licence modified on direction of the Secretary of State or the Welsh Ministers) to remove the right of compensation for water and sewerage undertakers when abstraction or impoundment licences are revoked or varied by either the Secretary of State or the Welsh Ministers

under section 54 (following Environment Agency or Natural Resources Body for Wales proposals) or section 56 (following an application by an owner of fishing rights).

208. This section also repeals section 61A (recovery of compensation from new licence-holder) of the WRA. This is necessary because, with the removal of the right to compensation for water and sewerage undertakers, section 61A is made obsolete.

Section 59: Main rivers in England and Wales

209. This section amends provisions for the determination and maintenance of main river maps, replacing sections 193 and 194 of the WRA with sections 193 to 193E for England and sections 194 to 194E for Wales. Main rivers are designated by being marked as such on a main river map. Flood risk management functions are determined in relation to the type of watercourse; the Environment Agency in England and the Natural Resources Body for Wales in Wales are responsible for carrying out functions on a main river, internal drainage boards are responsible for all other watercourses within internal drainage districts and lead local flood authorities for those outside of a drainage district.
210. New section 193 transfers responsibility for maintaining the main river map for England from the Secretary of State to the Environment Agency, and requires that the map shall be kept in electronic form.
211. **Section 193A** requires the Environment Agency to make copies of the map available to the public. The current requirement for the Environment Agency to supply copies of the relevant maps is extended to all risk management authorities (as defined by the Flood and Water Management Act 2010) and navigation authorities. Subsection (4) sets out the part of the map that must be provided in each case.
212. The Environment Agency will be able to charge a fee for others who wish to receive copies of the map/data; those who wish to reuse the data on a commercial basis may be charged a reasonable use fee. All others may be charged a fee to cover reasonable costs.
213. New section 193B empowers the Environment Agency to amend the main river map. In most cases, the Environment Agency must first make a determination under section 193C, and follow the procedure set out in that section. The Environment Agency must amend the main river map if a scheme imposing special charges for drainage works in order to improve agricultural land is introduced under section 137 of the WRA if the Environment Agency makes a determination under section 193C or if so directed by the Secretary of State as the result of an appeal under new section 193D.
214. New section 193C specifies the circumstances in which the Environment Agency may determine that a watercourse is to be, or is no longer to be, a main river or part of a main river. Before making a determination the Environment Agency must consult with interested parties on any change being proposed, and publish the results of its decision following such a consultation. When consulting the Agency is required to publish a notice about the proposed amendments, and set out how objections might be made, including time limits and any necessary restrictions on the form in which objections may be made. The Agency will be able to publicise its notice as it considers most appropriate to provide the best opportunity for those in the relevant area to be aware of any changes, whether this be on the Agency's website and or in newspapers which circulate in the locality affected.
215. New section 193D sets out an appeals process. Appeals must be made within 6 weeks of any decision being made by the Agency. The Secretary of State will be able to allow, allow in part or reject the appeal, and to direct the Agency to publish the decision.
216. New section 193E empowers the Secretary of State to issue guidance to the Environment Agency. Such guidance may include criteria on when it is appropriate for a watercourse to become a main river and guidelines on when boundaries need to be reviewed, and may set out the criteria or other guidance that ought to be followed when proposing to vary a main river map as well as when to consult.

217. New sections 194 to 194E replicate, for the Natural Resources Body for Wales and the Welsh Ministers in Wales, the provisions of new sections 193 to 193E for the Environment Agency and the Secretary of State in England.

Section 60: Maps of waterworks

218. This section repeals section 195 of the WRA, removing the duty on the Environment Agency and the Natural Resources Body for Wales to keep and maintain a record of the resource mains, discharge pipes and other underground works that it owns. Subsection (2) makes a consequential amendment to Schedule 23 to the WRA to allow for the fact that the records of aspects of the Environment Agency's "undertaking" will no longer be recorded in maps kept by the Environment Agency.

Part 3

Environmental Regulation

Section 61: Regulation of the water environment

219. This section enables the Secretary of State (in relation to England and in relation to such parts of the River Esk as are situated in Scotland) and the Welsh Ministers (in relation to Wales) to make regulations about water abstraction and impounding licences, flood defence consents and requirements for fish passes and screens. The regulation making power is modelled upon the power in the single environmental permitting regime created under the Pollution Prevention and Control Act 1999 (the PPC Act). Regulations under this section may be combined with regulations made under that regime to create a common system of environmental regulation.
220. Under the PPC Act, Ministers have powers to regulate polluting activities under a single regime. However, they do not have a power to place abstraction and impoundment licensing, flood defence consents or fish passage within that regime, as these do not relate to pollution as defined.
221. Integrating the permitting and regulatory regimes for abstraction, impounding, flood defence and fish passage will allow regulators to use one common process and compliance framework. The framework allows different levels of control to be applied to a particular activity, according to risk: bespoke permits; standard permits; exemptions from the requirement to hold a permit if specified conditions are satisfied.
222. Subsection (1) empowers the Secretary of State and the Welsh Ministers to make regulations for the purposes set out in Part 1 of Schedule 8. Under subsection (2), any provision made by such regulations must be made for or in connection with regulating: the use of water resources; securing the drainage of land or the management of flood risk; or safeguarding the movement of freshwater and migratory fish through regulated waters. Under subsection (3), Ministers must have regard to reducing burdens by combining regulations made under this section with systems for regulating activities causing pollution. Subsection (4) is a power to make consequential amendments to legislation, including primary legislation. Subsection (5) requires consultation before any regulations are made. Under subsection (11), regulations in relation to the passage of fish may apply to so much of the Border Esk River with its banks and tributary streams up to their source as situated in Scotland, and will not apply in the lower reaches of the River Tweed in England on the assumption that they will be regulated under law made by the Scottish Ministers. Historically, English legislation on salmon and freshwater fisheries has applied to the Scottish as well as the English River Esk and its tributaries. Conversely, Scottish legislation has applied to the English as well as the Scottish Tweed.

Section 62: Environmental regulation: procedure

223. This section sets out the parliamentary process to be followed by the Secretary of State and the Welsh Ministers when making regulations under section 61. Subsection (4) ensures that the first sets of regulations made by the Secretary of State and by the Welsh Ministers will be subject to the affirmative resolution procedure. Any subsequent regulations which create an offence or increase a penalty for an existing offence or which amend or repeal any provision of primary legislation, will also be subject to the affirmative procedure. Other than in these circumstances, regulations will be subject to the negative resolution procedure unless subsections (5) and (6) are relevant.
224. Subsections (5) and (6) make provision about the procedure that will apply if regulations made under section 61 are combined with regulations made under section 2 of the PPC Act. Subsection (13) inserts a provision in the PPC Act referring to section 61 of this Act to ensure that this requirement is referenced in that Act.
225. Subsections (9) to (12) set out the relevant procedures for statutory instruments which combine regulations made by the Secretary of State under section 61 with regulations made by the Welsh Ministers under that section.

Section 63: Repeal of certain provisions about culverts

226. This section repeals sections 262 and 263 of the Public Health Act 1936.
227. Section 262 of the Public Health Act 1936 gives local authorities power to require the culverting of watercourses and ditches where building operations are proposed. Section 262 was introduced to allow watercourses to be covered so that they did not cause health problems. The approach now is to address the pollution and not cover up the watercourse. In addition the Environment Agency and Natural Resources Body for Wales discourage culverting as it is not consistent with good surface run-off.
228. Under section 263 watercourses in urban districts may not be culverted except in accordance with plans approved by the local authority.
229. Section 23 of the Land Drainage Act 1991 and section 109 of the WRA require that owners/occupiers who wish to erect or alter any mill dam, weir or other like obstruction to a watercourse, or erect or alter any culvert must seek the prior consent from either the Lead Local Flood Authority, the relevant internal drainage board, the Environment Agency or the Natural Resources Body for Wales depending on the location of the proposed works. In combination with section 263 of the Public Health Act 1936 these provisions require that owner/occupiers apply for parallel consents from a number of bodies. Section 263 of the Public Health Act 1936 is being repealed in order to remove the requirement for parallel consents.

Part 4

Flood Insurance

The Flood Reinsurance Scheme

Section 64: The Flood Reinsurance Scheme

230. Subsection (1)(a) introduces the Flood Reinsurance Scheme (“FR Scheme”) as a scheme established for the purpose set out in subsection (2). Subsection (1)(b) states that the FR Scheme will be designated by regulations made by the Secretary of State.
231. Subsection (2) specifies the purpose of the FR Scheme which is to promote the availability and affordability of flood insurance for household premises, while limiting the costs of doing so. The FR Scheme will do this by making reinsurance for flood risk available to all insurers that underwrite household insurance policies in the UK. Reinsurance is routinely purchased by insurers to limit their exposure to risk. The

FR Scheme will cover the risks that are directly attributable to flooding but will not cover other risks, such as theft or subsidence, which tend to be covered under standard household policies. The provision of reinsurance shall be done in a way as to manage the transition to risk reflective pricing.

232. Subsection (3) gives the Secretary of State power to make regulations to set the level of those reinsurance premiums which will be payable by relevant insurers should they choose to reinsure flood risk relating to an insurance policy with the FR Scheme. Subsection (4) provides that those regulations may make different provision for different purposes by reference to the value of the property insured which is likely to be by reference to Council Tax bands (or an equivalent where Council Tax bands are not in place). Subsection (5) provides a definition of flood insurance for the purpose of the FR Scheme.

Section 65: Scheme administrator

233. This section sets out who will administer the FR Scheme. Subsection (1) gives the Secretary of the State the power to designate a body as the administrator of the FR Scheme by regulations. Subsection (2) specifies that the FR Scheme administrator may be a company registered under the Companies Act 2006 or other body.

Section 66: Scheme funding

234. This section covers measures needed to fund the FR Scheme. Subsection (1) provides a power for the Secretary of State to make regulations with the consent of the Treasury, requiring relevant insurers to pay a levy in accordance with the regulations (see subsection (1)(a)) or such further amounts as may be requested by the FR Scheme administrator in accordance with the FR Scheme (see subsection(1)(b)). It is intended that all insurers underwriting household buildings and/or contents insurance policies in the UK would be required to pay a levy and ad hoc payments to the FR Scheme administrator.
235. The levy that may be imposed under subsection (1)(a) is designed to replace the current, informal cross-subsidy in the market between those at low and high risk of flooding that has historically subsidised the flood cover that is made available to those at high risk.
236. Ad hoc payments could be required from relevant insurers under subsection (1)(b) from time to time, should the FR Scheme have insufficient income from the premium incomes and the levy payments to meet its outgoings. Subsection (2) specifies that the regulations under subsection (1)(b) may set out the circumstances under which a request for ad hoc payments may be requested, and set out limits on what amount could be requested for that top up funding.
237. Subsection (3) provides for the FR Scheme administrator to pursue non-payment of the required levies and payments from individual insurers as a civil debt. Subsection (4) provides for regulations regarding the use of the levy and ad hoc payments, for instance to allow the FR Scheme administrator to cover its administrative costs. Subsection (5) gives the Secretary of State the power to make regulations requiring that, where conditions set out in the regulations are met as regards the reserves of the FR Scheme, the FR Scheme administrator must pay an amount of the reserves to the Secretary of State. These regulations will require the consent of the FR Scheme administrator, which may not be unreasonably withheld.

Section 67: Scheme administration

238. Subsection (1) provides a power for the Secretary of State to make regulations about the administration of the FR Scheme. Subsection (2) provides that the regulations may require the FR Scheme administrator to have regard to certain matters in discharging its functions – as set out in subsections (2)(a) to (d). Subsection (3) also allows for the regulations under subsection (1) to require the FR Scheme administrator to produce and

publish a plan for achieving the transition to risk-reflective pricing over the life of the scheme.

239. Subsection (4) provides a power to place a requirement on the FR Scheme administrator to provide information to relevant insurers to pass on to their policyholders whose policies are reinsured under the FR Scheme. The information is intended to help households understand the flood risk in their area, how it can be managed and understand the transitional nature of the FR scheme.
240. Subsection (5) sets out a number of matters relating to finance and accounting which the regulations may provide for. These include: limiting the company's ability to borrow and incur debt; limiting the financial losses that may be incurred; restricting draw downs and transfers and making provisions about any reserves Flood Re builds up; specifying the form and contents of Flood Re's accounts; and requiring that Flood Re's accounts be laid in Parliament.
241. Those regulations may also provide for the National Audit Office (NAO) to examine how the FR Scheme administrator has delivered value for money in the discharge of its duties and if the FR Scheme has been operated with propriety and regularity. The regulations may require the provision of access to documents and any assistance required by the NAO.
242. Subsection (6) provides that the regulations under subsection (1) may require the FR Scheme administrator to appoint a "responsible officer" and may set out the responsibilities of the responsible officer. These may include responsibility in respect of the Scheme's finances and the Scheme's accounts; accountability to Parliament for value for money, propriety and regularity; and examination and reports by the National Audit Office.
243. Subsection (7) states that regulations under subsection (1) may make provision about the disclosure of information required for the purpose of the FR Scheme. In particular the regulations may require relevant insurers to provide information on insurance policies to the FR Scheme administrator.
244. Subsection (8) provides that regulations under subsection (1) may require the FR Scheme administrator to provide information (for example the number of claims for flooding made) to the Environment Agency, Scottish Environment Protection Agency, the Natural Resources Body for Wales (which is commonly known as Natural Resources Wales), the Department of Agriculture and Rural Development in Northern Ireland, or another body as may be specified.
245. Under subsection (9) the FR Scheme administrator may also be required to provide information to the Secretary of State as may be needed for the purposes of government accounting.
246. The subsections in this section set out particular provision which may be made in regulations under subsection (1). Subsection (10) states that subsections (2) to (9) are not exhaustive as to the provision which the regulations may make. Subsection (11) specifies that the definition of "flood insurance" has the meaning given in section 64 and sets out the definition of "the FR Scheme's accounts".

Section 68: Replacement of the scheme or administrator

247. This section makes provision for the situation where either of the designations for the FR Scheme administrator or the FR Scheme is revoked. Subsections (1) and (2) set out provisions which regulations made under section 64 and 65 may include.
248. Subsection (1) operates in the circumstances where the FR Scheme is replaced with a new FR Scheme. Replacement of the FR Scheme would be achieved by revoking the designation of the existing scheme using the power under section 64 and making a new designation for a replacement scheme.

249. Subsection (2) operates in the circumstances where the existing Scheme administrator is replaced. It makes provision for the transfer of property, rights and liabilities, including pension liabilities in respect of staff in such circumstances. The replacement of the Scheme administrator itself would be achieved by revoking the designation of the existing scheme administrator using the power under section 64 and making a new designation.

Section 69: Disclosure of HMRC council tax information

250. Subsection (1) allows the Commissioners for Her Majesty's Revenue and Customs to disclose "relevant HMRC council tax information" for use for preparatory purposes in relation to the setting up of the FR scheme and for the purposes of the FR Scheme once it has been designated. "Relevant HMRC council tax information" is defined in subsection (3), as is "HMRC council tax information". Subsection (2) provides for how the information, once disclosed, may be used and that it may not be further disclosed except with the consent of the Commissioners.
251. Subsection (4) provides powers to amend the definition of "relevant HMRC council tax information". If any such amendment is made, subsection (5) allows further regulations to be made, in accordance with subsection (6). Subsection (6) sets out that regulations may create a criminal offence by applying section 19 of the Commissioners for Revenue and Customs Act 2005 to the disclosure of the items of "relevant HMRC council tax information" which have been added to the definition under regulations made under subsection (4). The regulations may provide for section 19 to apply if disclosure is in contravention of subsection (2)(b) and if the information disclosed relates to a person who can be identified from the disclosure. Subsection (7) sets out that the Secretary of State must consult the Commissioners before amending the definition of "relevant HMRC council tax information".

Flood insurance obligations

Section 70: Flood insurance obligations

252. **Section 70** gives the Secretary of State the power to require a relevant insurer to issue insurance policies for a prescribed number of registered premises (a "Flood Insurance Obligation").
253. Subsections (1) to (3) give the Secretary of State the power to make regulations which require a relevant insurer to issue insurance policies that provide cover to a prescribed number of "registered premises". Registered premises are defined in section 82(8) as properties included in the register of premises subject to greater flood risk. Insurers can be required to issue different numbers of policies for different descriptions of risk; the intention is that insurers may be required to fulfil quotas relating to both buildings and contents insurance.
254. Subsection (4) sets out factors that the regulations can specify are to be taken into account in determining the prescribed number of registered premises in respect of which a relevant insurer must issue insurance. These factors include a target number of registered premises that the Secretary of State determines under section 71(1), and the insurer's share of insurance business of a prescribed description.
255. Subsection (5) provides for the regulations to specify how a relevant insurer's share of insurance business should be calculated and the circumstances under which a relevant insurer may be exempt from the Flood Insurance Obligation, including by reference to the amount of business the insurer does. This subsection makes provision for regulations to set out the circumstances in which the Flood Insurance Obligation would cease to apply for a relevant insurer. This subsection also allows the regulations to specify circumstances in which a policy issued by an insurer would not count towards meeting its quota and to specify circumstances in which a relevant insurance policy issued by one insurer can count towards the Flood Insurance Obligation imposed on another relevant

insurer. This subsection also makes provision for regulations to provide that properties at greater flood risk count for more, and those at lesser risk count for less, when it is being decided how many registered premises an insurer has insured.

256. Subsection (6) provides that the regulations may require an insurer to use information held by the Secretary of State, a person acting on the Secretary of State's behalf or the Financial Conduct Authority to determine their share of insurance business.
257. Subsection (7) states that provisions allowing policies issued by one insurer to count for discharging another's Flood Insurance Obligation should not be construed as requiring a change of insurer. Subsection (8) provides for a case where an insurer has not provided the information required by section 72 for determining whether an insurer is a relevant insurer under this section, whether an exemption applies and what share of business an insurer would be treated as having. Subsection (9) imposes a duty on the Secretary of State to consult with persons he considers appropriate before making regulations under this section. The Secretary of State expects to consult the financial regulators.

Section 71: Target number

258. Subsection (1) gives the Secretary of State the power to periodically set the target number. The target number is the number of registered premises as regards which insurers are collectively required to issue policies under the regulations in section 70. It can be expressed as a percentage of the premises on the register. The regulations can specify different targets for insurance policies relating to different descriptions of risk. Regulations made under this section may set target numbers for two or more consecutive compliance periods so that insurers may plan ahead.

Section 72: Information

259. **Section 72** provides for the Secretary of State to set out in regulations arrangements for the provision of information or production of documents by insurers for the purposes of the requirements on insurers under section 70. Subsection (2) provides for regulations that give the Secretary of State or a person acting on his behalf the power to require certain documents or information that help demonstrate whether or not the insurer is a "relevant insurer" or whether an exemption applies under subsection (5)(b). Subsection (3) provides further detail on the types of information or documents that may be required from insurers in the regulations and subsection (4) provides for the regulations to specify whether the information should be provided to the Secretary of State or a person acting on the Secretary of State's behalf.
260. Subsection (5) is about how information and documents are to be delivered and how they are to be verified or authenticated. In subsection (6) the regulations may put limits on what persons receiving the information may then do with it. The regulations may also allow the Secretary of State to publish information about the amount of business done by the insurance industry as a whole in relation to prescribed risks. This will enable insurers to calculate their targets in line with the regulations made under section 70.

Section 73: Section 72: further provision

261. **Section 73** provides the Secretary of State with the power to make regulations for enforcement of the regulations made under section 72. Under subsection (2) regulations may in particular make provision for the Secretary of State or a person acting on his behalf to impose sanctions, including civil penalties. The regulations would set out the procedures which the Secretary of State must follow before a sanction can be imposed and provide for costs incurred in connection with imposing a sanction to be recovered. The regulations would provide for appeals against sanctions or requirements to pay costs to be made to the First-tier Tribunal.
262. Subsection (3) states that the regulations would provide in particular for civil penalties of a fixed amount and for further sums to be payable where an insurer continues to

not comply with the requirements (that is to continue to fail to provide the required information). The regulations would also include provisions for the process by which a civil penalty and any amount of costs may be recovered.

Section 74: Register of premises subject to greater flood risk

263. **Section 74** provides for the Secretary of State to set out in regulations arrangements for the creation and maintenance of a register of premises in the UK which are subject to greater flood risk. Subsections (2) and (3) allow the regulations to provide for the level of flood risk registered premises face to be recorded in the register. The regulations may do this by setting out flood “risk bands” and requiring that the register record which risk band applies to particular premises.
264. Subsection (4) provides for the regulations to exclude particular types of properties from the register including in particular those constructed after a certain date. Subsection (5) provides for the regulations to specify the information to be contained in the register and to make access, publication, disclosure and notification arrangements for the register and the information contained in it. Subsection (6) provides for conditions to be set on recipients of the information with regard to onward disclosure of the information and arrangements for penalties to be issued if those conditions are not complied with.
265. Subsection (7) provides for the regulations to specify that only applications for the inclusion of a property in the register of premises subject to greater flood risk made by or on behalf of a person with the qualifying interest in the premises may be allowed. The “qualifying interest” is to be defined in regulations under section 82(6).
266. Subsection (8) provides for the regulations to permit the removal of premises from the register if a person with the qualifying interest in the property requests its removal. Under subsection (9), before making regulations under these provisions the Secretary of State must consult with the Welsh Ministers, the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland.

Section 75: Functions of relevant bodies

267. **Section 75** provides for the regulations made under section 74 to set out which bodies will carry out which functions in connection with the register of premises subject to greater flood risk.
268. Subsection (1) specifies which functions may be carried out by the “relevant bodies” as those that are connected with the creation and ongoing maintenance of the register, access to or disclosure of information contained within the register, publication of the register and notifying people when particular premises are included in the register. Subsection (2) names the bodies that are to be the relevant bodies in different parts of the United Kingdom.
269. Subsection (3) enables the regulations to specify an additional role for the Environment Agency. The additional role would involve the Environment Agency coordinating the work carried out by relevant bodies under subsection (1) and promoting the consistency of this work. Subsection (4) enables the regulations to require relevant bodies to cooperate with each other in this work and for relevant bodies other than the Environment Agency to cooperate with the Environment Agency in the carrying out of its additional duties under subsection (3).
270. Subsection (5) provides that regulations may provide for information held for council tax purposes by the Valuation Office to be disclosed to the Environment Agency or the Natural Resources Body for Wales. Restrictions can be placed on further disclosure and how the data can be used. This data will enable properties where construction was completed after a certain date to be excluded from the register. Similar provisions are not required to cover the required data in Scotland and Northern Ireland because this is already publicly available.

Section 76: Reviews and appeals

271. **Section 76** enables the regulations made under section 74 to provide for a person with the qualifying interest in a property to seek a review of a decision by a relevant body that the property does not qualify to be included on the register of premises subject to greater flood risk. It also enables the regulations to provide for that person to appeal to the First-tier Tribunal in England and Wales, the sheriff in Scotland, or the Water Appeals Commission for Northern Ireland, if upon review the relevant body has decided that the property does not qualify for inclusion on the register.

Section 77: Expenses of relevant bodies

272. **Section 77** provides the Secretary of State with the power to make regulations to raise a levy from insurers, with the consent of the Treasury. The levy is intended to allow Government to recover its costs in maintaining the register. Regulations could also provide for the recovery of any costs incurred by the Secretary of State in relation to the administration of the levy.
273. Subsection (2) states that regulations may specify the rate of the levy, or the way in which it will be calculated, as well as how often and in what way it will be paid by insurers. Under subsection (3) the regulations may, in particular, make provision for determining the amount of the levy based upon the qualifying expenses incurred by the Environment Agency and its equivalents in the Devolved Administrations.
274. Subsection (4) enables regulations to make provision for the sums payable as a levy to be recoverable as a civil debt. Under subsection (5), before making the regulations, the Secretary of State must consult with the Welsh Ministers, the Scottish Ministers and the Department of Agriculture and Rural Development in Northern Ireland. Subsection (6) defines “qualifying expenses” as the proportion of a relevant body’s expenses that the Secretary of State considers reasonable in regard to its functions under section 74. “Qualifying expenses” also means those expenses of the Secretary of State attributable to carrying out functions conferred by and under this section.

Section 78: Compliance reports

275. **Section 78** provides the Secretary of State with the power to make regulations that require insurers to report the extent to which they have complied with their Flood Insurance Obligations. Subsection (2) provides that regulations may require insurers to report the extent of their compliance with the Flood Insurance Obligation in a specified period and may prescribe certain details to be supplied by insurers that support that report. Subsection (3) allows for the Financial Conduct Authority to be the responsible body for accepting reports under this section.

Section 79: Functions of the FCA

276. Subsection (1) of section 79 confers powers on the Treasury to make regulations giving the Financial Conduct Authority a role in monitoring and enforcing compliance with such of the requirements imposed under sections 70 and 78 as are specified.
277. Subsection (2) provides that the regulations may give the Financial Conduct Authority a role in enforcing compliance with such of the information requirements under section 72 as are specified. Subsection (3) specifies when the Financial Conduct Authority can be empowered to take enforcement action in relation to subsection (2). This is in cases where the insurer provides information that is not true or produces a document that is not correct; or in cases where measures available to the Secretary of State under section 73 have been taken without securing compliance.
278. Subsection (4) provides that the regulations may apply provisions of the Financial Services and Markets Act 2000 or the Financial Services Act 2012 (including with

or without modifications) in relation to powers conferred on the Financial Conduct Authority under this section.

279. Subsection (5) makes mention of particular provisions in the Financial Services and Markets Act 2000 or the Financial Services Act 2012, which may be applied under subsection (4) in relation to powers conferred on the Financial Conduct Authority under this section for the purpose of its role in monitoring and enforcing compliance with those requirements imposed under sections 70 and 78 that are specified, and enforcing compliance with those requirements imposed under section 72 that are specified.
280. Subsection (6) provides that the regulations may enable the Financial Conduct Authority to make arrangements for the performance of functions on its behalf to the extent that the regulations prescribe.

Section 80: Reports by the FCA

281. **Section 80** gives the Treasury enabling powers to provide by regulations for the Financial Conduct Authority to prepare reports on the discharge of its functions in relation to section 79. Subsection (2) provides for the regulations to specify the contents and timing of the reports, provide for copies of the reports to be given to the Secretary of State and others and provide for publication of the reports.

Section 81: Intervention by the FCA or the PRA

282. **Section 81** confers powers on the Treasury to provide, by regulation, for the regulators (defined as the Financial Conduct Authority and the Prudential Regulation Authority under subsection (12)) to disapply or modify the requirements imposed under sections 70, 72 and 78. Subsection (2) defines the intervention power as the power conferred by regulations under subsection (1).
283. Subsection (6) describes particular situations that might be dealt with using the intervention power. Subsection (7) is mostly about the procedures for exercising the intervention power. Provision under subsection (7)(g) would require a regulator to keep under review cases in which it has used the power. Subsection (8) enables regulations under subsection (7) to except material from publication where publication would be contrary to the public interest. Subsection (9) sets out that the intervention power may be exercised in respect of an obligation imposed under section 70(1) only so as to disapply the requirements of the flood insurance obligation.
284. The Financial Conduct Authority and the Prudential Regulatory Authority have existing powers under the Financial Services and Markets Act 2000 and the Financial Services Act 2012 to supervise, monitor and enforce regulatory requirements imposed on financial services firms. Subsections (10) and (11) provide for regulations to extend those powers in relation to the intervention power, with or without appropriate modifications.
285. Subsection (12) defines the “regulator” as the Financial Conduct Authority or the Prudential Regulation Authority. Subsection (13) defines certain terms in this section by reference to their definitions in the Financial Services and Markets Act 2000.

General

Section 82: Interpretation

286. Subsection (1) provides a definition of “insurer” for the whole of Part 4 of the Act. Subsection (2) enables the Secretary of State to make regulations to amend that definition.
287. Subsection (3) enables the Secretary of State to define “relevant insurer” in regulations for the purposes of this Part, after consulting with appropriate persons as set out in subsection (4).

288. Subsection (5) enables the Secretary of State to make definitions in regulations for the purposes of the provisions about the FR Scheme for “flood”, “flood risk” and “household premises”.
289. Subsection (6) enables the Secretary of State to make definitions in regulations for the purpose of the provisions about the Flood Insurance Obligation. One of the terms that can be defined in regulations under subsection (6) is “flood”.
290. Subsection (7) enables the regulations to make provision about the meaning of “flood” for both the FR Scheme and the Flood Insurance Obligation that distinguish between the possible causes of flooding.
291. Subsection (8) defines the terms “FCA”, “PRA”, “registered premises” and “risk band”.

Section 83: Period of operation

292. Subsection (1) creates a sunset for sections 64 to 81, which is to happen twenty-five years from the day on which the Act is passed. Subsection (2) allows the Secretary of State to make an order bringing forward the date sections 64 to 69 and 70 to 78 are repealed. Subsection (7) gives the Treasury the same power in respect of sections 79 to 81.
293. Subsection (3) allows the Secretary of State, by order, to make such provision as is required as a consequence of repealing sections 64 to 69 (Flood Reinsurance Scheme) or sections 70 to 78 (Flood Insurance Obligation). It also gives the Secretary of State the power to make orders in connection with the revocation of regulations which relate to the FR Scheme. Such orders can be made at any time before those sections are actually repealed. The order-making power can be used to amend or repeal an enactment. Subsection (4) gives details about the contents of orders which may be made, for example, an order dealing with the transfer of property, rights and liabilities including pension liabilities in respect of staff. Subsection (8) gives the Treasury the power to make consequential provision in connection with the repeal of sections 79 to 81.

Section 84: Regulations and orders

294. Subsection (1) provides for regulations or orders made under this Part of the Act, to be made by statutory instrument. Subsections (2) and (7) are aimed at avoiding any hybridity issues arising where an order under section 83(3) includes provision about the transfer of property, rights and liabilities.
295. Subsection (3) provides that regulations or orders made under this Part of the Act can make different provision for different purposes and different geographical areas. The regulations or orders made under this Part of the Act can include incidental, supplementary, consequential, transitional, transitory or saving provisions (subsection (4)).
296. Subsection (6) sets out when the affirmative resolution procedure will apply to a statutory instrument containing regulations or an order made under Part 4.

Part 5

Miscellaneous

Section 85: Internal drainage boards: procedure for orders confirming reorganisation

297. Schedule 3 to the Land Drainage Act 1991 sets out the procedure to be followed when making certain orders, including those for the reorganisation of internal drainage boards (IDBs). IDBs are locally funded semi-independent statutory bodies responsible for water level management in areas of special drainage need. Section 85 amends

*These notes refer to the Water Act 2014 (c.21)
which received Royal Assent on 14 May 2014*

Schedule 3 in respect of orders for the reorganisation of IDBs by inserting new paragraphs 4(1A) and 5(3A).

298. New paragraph 4(1A) removes the requirement for the Minister to publish a notice after an order has been made under section 3 for schemes in England and in Wales and thereby removes the 30 day advertising period in which a person affected by the order may present a memorial praying that the order should be subject to special parliamentary procedure.
299. New paragraph 5(3A) provides that an order made under section 3 for schemes in England and Wales will no longer be subject to special parliamentary procedure.

Section 86: Internal drainage boards in England: alternative procedure for byelaws

300. IDBs have powers under section 66 of the Land Drainage Act 1991 to make byelaws for land drainage and flood risk management purposes. IDBs must follow the process in Schedule 5 to that Act when making such byelaws.
301. **Section 86** inserts a new section 66A into the Land Drainage Act 1991 to enable the Secretary of State to make regulations establishing a new procedure for IDBs wholly in England to follow when making byelaws. The intention is to make regulations to bring the process IDBs follow broadly into line with that followed by local authorities.
302. In prescribing the alternative procedures to be followed, the section empowers the Secretary of State to include in regulations provision on the consultation procedures which IDBs should follow before making a byelaw, and for advertising the new byelaw locally once it has been made.

Section 87: Publication requirements under the Land Drainage Act 1991

303. **Section 87** introduces Schedule 9 which amends the Land Drainage Act 1991 to remove restrictions on the way in which internal drainage boards documents in England have to be published.

Section 88: Sustainable drainage systems: non-performance bonds

304. This section amends Schedule 3 to the Flood and Water Management Act 2010. This relates to the situation where a non-performance bond is required as a condition of approval of a drainage system under Schedule 3, and the bond is provided by a third party specialist bondsman on behalf of the developer. Section 88 ensures that, where a payment is made under the bond, any excess is refunded to the person that made the payment under the bond, rather than always being made to the developer.

Section 89: Amendments relating to Regional Flood and Coastal Committees

305. This section introduces Schedule 10 to this Act.

Part 6

General and Final

Sections 90 to 95: General and final provisions

306. **Sections 90 to 95** make general provision for the Act.
307. **Section 90** gives the Secretary of State a power to make amendments consequential on the Act. This includes a power to make transitional, transitory or saving provision and a power to repeal and amend legislation, including primary legislation. Where primary legislation is repealed or amended, the affirmative resolution procedure must be followed. Section 91 gives the Secretary of State and the Welsh Ministers a power to make transitional, transitory or saving provisions by order in relation to the coming

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into force of any provision within the Act. Subsection (5) introduces Schedule 11 which makes further provision about the contents of orders under this section.

308. [Section 94](#) makes provision about commencement. Sections 69 and 90 to 95 and Schedules 11 and 12 come into force on the day on which the Act is passed. Sections 3, 13, 15, 21, 22, 25(3), 26 to 28, 33, 34(1) and (2), 35, 36, 57, 58, 60 to 63, 85 to 89 and paragraphs 8 and 107 of Schedule 7 and Schedules 8 and 10 come into force two months after the Act is passed, so far as specified. Otherwise, the Act is to be brought into force by order made by the appropriate authority. Subsection (5) provides that the appropriate authority is the Secretary of State except where the table in Schedule 12 otherwise provides.