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STATUTORY INSTRUMENTS

2005 No. 3075

WATER INDUSTRY, ENGLAND AND WALES

The Water Supply (Exceptions from Supply System Prohibitions) Regulations 2005

<i>Made</i>	- - - -	<i>2nd November 2005</i>
<i>Laid before Parliament</i>		<i>7th November 2005</i>
<i>Coming into force</i>	- -	<i>1st December 2005</i>

The Secretary of State acting, save in so far as the National Assembly for Wales is so acting, in exercise of the powers conferred upon her by sections 66I(3) and 66J(3) of the Water Industry Act 1991(1),

and

the National Assembly for Wales acting in exercise of the powers conferred upon it by sections 66I and 66J of the Water Industry Act 1991 in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales,

hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Water Supply (Exceptions from Supply System Prohibitions) Regulations 2005 and shall come into force on 1st December 2005.

Interpretation

2. In these Regulations—

“the Act” means the Water Industry Act 1991;

“private supply” has the meaning given in section 93(1) of the Act(2); and

(1) 1991 c. 56; sections 66I and 66J were inserted by section 56 of, and Schedule 4, paragraphs 1 and 3 to, the Water Act 2003 (c. 37). The powers to make regulations under sections 66I and 66J are exercisable by the National Assembly for Wales (and not the Secretary of State) in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales; see sections 66I(8) and 66J(9). References to the supply system of a water undertaker are to be construed in accordance with section 17B(5) of the Act; see section 66I(9). Section 17B was inserted by section 56 of, and Schedule 4, paragraphs 1 and 2 to, the Water Act 2003.

(2) Section 93(1) of the Act was amended by section 101(1) of, and Schedule 8, paragraph 28 to, the Water Act 2003.

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“enactment” includes subordinate legislation within the meaning of section 21 of the Interpretation Act 1978(3) but excludes subordinate legislation made by—

- (a) “A”, where regulation 3(1)(b) applies; and
- (b) “E”, where regulation 4(1)(b) applies.

Specified circumstances in which prohibition on use of a supply system does not apply

- 3.—(1) Subject to paragraph (2), section 66I(1) of the Act shall not apply where—
- (a) a water undertaker (“A”) is using the supply system of another water undertaker (“B”) under an agreement for a supply of water in bulk(4) by B to A;
 - (b) A is using B’s supply system under any enactment requiring that a supply of water in bulk be made by B to A; or
 - (c) a relevant person (“C”) is using the supply system of a water undertaker (“D”) pursuant to a relevant undertaking for the purpose of making a private supply to any premises.
- (2) Paragraph (1)(a) shall not apply in so far as—
- (a) A uses B’s supply system for the purpose of supplying water to premises within the geographical area to which A’s appointment relates; and
 - (b) the water has been introduced into B’s supply system for that purpose by A or by any relevant person under an agreement with A.
- (3) For the purposes of this regulation—
- (a) “relevant person” means—
 - (i) in paragraph (1)(c), a person who is not a water undertaker or a licensed water supplier; and
 - (ii) in paragraph (2)(b), a person other than A or B; and
 - (b) “relevant undertaking” means an undertaking entered into by D with C before 31st July 2002 under which a supply of water was made by D to C before that date.

Specified circumstances in which prohibition on introduction of water into a supply system does not apply

- 4.—(1) Subject to paragraph (2), section 66J(1) of the Act shall not apply where—
- (a) the water is introduced under an agreement with the water undertaker;
 - (b) the water is introduced into the supply system of a water undertaker (“E”) by another water undertaker (“F”) under any enactment requiring that a supply of water in bulk be made by F to E; or
 - (c) the water is introduced by a secondary water undertaker into a primary water undertaker’s supply system pursuant to section 66C of the Act (wholesale water supply by secondary undertaker).
- (2) Paragraph (1)(a) shall not apply in so far as the water is introduced by any person for the purpose of supplying water to any premises of a customer of that person.

(3) 1978 c. 30.

(4) The expression “supply of water in bulk” has the meaning given by section 219(1) of the Act.

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2nd November 2005

Elliot Morley
Minister of State,
Department for Environment, Food and Rural
Affairs

Signed on behalf of the National Assembly for Wales,

1st November 2005

D.Elis-Thomas
Presiding Officer

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EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Section 66I of the Act prohibits the use of a water undertaker’s supply system for the purpose of supplying water to any premises of a customer. This prohibition does not apply if the supply is made by the water undertaker, by a licensed water supplier in pursuance of its licence or in such further circumstances as the Secretary of State or National Assembly for Wales (“the Assembly”) may specify in regulations.

Section 66J of the Act prohibits the introduction of water into a water undertaker’s supply system (other than by the undertaker itself). This prohibition does not apply if the water is introduced by a licensed water supplier in pursuance of its licence, by another water undertaker under an agreement for a supply of water in bulk or in such further circumstances as the Secretary of State or Assembly may specify in regulations.

It is a criminal offence to breach the prohibitions in sections 66I or 66J of the Act.

These Regulations specify further circumstances in which the prohibitions in sections 66I and 66J of the Act do not apply.

Regulation 3(1)(a) and (b) allows water undertaker A to use water undertaker B’s supply system for the purpose of allowing water undertaker A to make supplies to the premises of its customers where water undertaker A receives a bulk water supply from water undertaker B under an agreement or certain statutory requirements. The exception in relation to bulk supply agreements does not apply where water undertaker A is using water undertaker B’s supply system under a “common carriage” arrangement. This is an arrangement which allows a person to introduce water into a water undertaker’s supply system by means of which a supply to the premises of a customer of that person can be made.

Regulation 3(1)(c) allows private supplies made under arrangements which were active before 31st July 2002 to continue.

Regulation 4(1)(a) allows the introduction of private water resources into an undertaker’s supply system where a water undertaker agrees. This exception does not apply where the introduction is part of a “common carriage” arrangement.

Regulation 4(1)(b) allows a water undertaker to introduce water into another water undertaker’s supply system where this is a supply of water in bulk made pursuant to certain statutory requirements.

Regulation 4(1)(c) allows a secondary water undertaker to make an introduction of water into a primary water undertaker’s supply system for the purposes of section 66C of the Act.

No regulatory impact assessment has been prepared in respect of these Regulations. A regulatory impact assessment in respect of the Water Act 2003 was prepared and placed in the library of each House of Parliament during the passage of the Water Bill. This included an assessment of the water supply licensing provisions. Copies can be obtained from Water Supply and Regulation Division,

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Department for Environment, Food and Rural Affairs, 55 Whitehall, London, SW1A 2EY or from the Department's website at www.defra.gov.uk/environment/water/legislation.

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