

EXPLANATORY MEMORANDUM TO
THE WATER SUPPLY (EXCEPTIONS FROM SUPPLY SYSTEM PROHIBITIONS)
REGULATIONS 2005

2005 No. 3075

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Water Act 2003 (WA03) amends the Water Industry Act 1991 (WIA91) to permit a company that holds a water supply licence to have access to a water undertaker's supply system to supply water to customers at eligible premises. The introduction of water into or use of a water undertaker's supply system by anyone other than the water undertaker itself, a licensed water supplier, or in some circumstances another undertaker, is prohibited. The Regulations specify further circumstances in which the prohibitions will not apply.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The WA03 amends the WIA91 to extend opportunities for competition for water supply within England and Wales. Among other things, it provides a specific framework for access to the public water supply system, by permitting a licensed water supplier (licensee) to have access to certain parts of a water undertaker's supply system, in certain circumstances, for the purpose of supplying water to customers' eligible premises.

4.2 Section 66I prohibits the use of a water undertaker's supply system by anyone other than the undertaker itself or a licensee and section 66J prohibits the introduction of water into a water undertaker's supply system other than by the water undertaker itself or by a licensee in pursuance of its licence or by another water undertaker who has an agreement to supply water in bulk. These sections also provide for the Secretary of State and the National Assembly for Wales by regulations to specify further circumstances in which the prohibitions shall not apply.

4.3 These Regulations are one of a number of Statutory Instruments required to implement the new provisions of the WIA91 related to the new water supply licensing regime. However, legally, these Regulations stand alone.

5. Extent

5.1 This instrument has been made together with the National Assembly for Wales and extends and applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The new water supply licensing provisions were developed in the light of the responses received by Defra and the Welsh Assembly Government (the Assembly Government) to their joint public consultation on “Extending Opportunities for Competition in the Water Industry in England and Wales” (July 2002).

7.2 As part of the implementation of the water supply licensing provisions in the WIA91, Defra, the Assembly Government and Ofwat published a consultation paper on ‘Policy proposals on exceptions regulations and exemptions’ in December 2004. This consultation paper invited comments on the proposed policy towards and draft Statutory Instrument granting exceptions to the supply system prohibitions, and also whether there were additional circumstances not covered by the proposals. Twenty-five stakeholders responded to the consultation.

7.3 The consultation paper proposed making exceptions in respect of the use of water supply systems where water undertakers had arrangements in place for the supply of water in bulk from one to another. The proposals did not extend to bulk supply arrangements by which a purchasing water undertaker uses the supply system of a second water undertaker solely to transport water. This amounts to a common carriage arrangement and hence water undertakers or other persons wishing to undertake such activity should, under the new water supply licensing arrangements, seek to become licensees.

7.4 The paper also proposed to except introductions by licensees or other persons under an agreement with the undertaker for the purchase of that water. This provides for circumstances where it is economically sensible for the water undertaker to purchase additional supplies of water. Water undertakers will not be obliged to purchase water but will be permitted to do so by the proposed exception.

7.5 Most respondents supported the proposed exceptions but there was a general concern that large numbers of existing private supply arrangements, by which customers receiving a supply from a water undertaker in turn supply third parties, would be proscribed by the prohibition on the use of a water undertaker’s supply system. Several respondents suggested introducing either a time limited exemption or an interim period before the prohibitions take effect, to allow time for customers to consider their position and apply for an exemption or water supply licence as appropriate. An alternative suggestion presented by a number of respondents was a block exception for all pre-existing supply arrangements.

7.6 In the light of the responses, and following further consideration of the policy with the Assembly Government, the Regulations provide an exception in respect of all private supply arrangements active as at 31 July 2002, the date of publication of the joint consultation paper on competition. The consultation paper stated the policy intention not to prevent existing water supply arrangements from continuing and to minimise possible disruption resulting from the prohibitions. In the light of the

evidence presented by respondents, the Government believes this to be the most pragmatic solution. It has the advantage of significantly reducing the administrative burden on private suppliers who would otherwise have to obtain a water supply licence in order to continue to do something they are already doing, cease supplying or seek specific individual exemption from the prohibitions.

7.7 In response to other comments made, the Regulations provide an exception for bulk supplies that are required under any enactment and for introductions into supply systems which are required under section 66C WIA91. This is to ensure that no one is left in the difficult position of being required by law to use or introduce water into a supply system, whilst being prohibited from doing so under sections 66I or 66J WIA91.

7.8 The consultation document is available on Ofwat's website at www.ofwat.gov.uk. The Government's response to the consultation on the Water Supply (Exceptions from supply system prohibitions) Regulations 2005 will be published on Defra's website at: <http://www.defra.gov.uk/environment/water/industry/wa03regs/competition.htm>

7.9 These Regulations are of interest to water undertakers, potential licensees and customers eligible for competition in water supply. There is no public or media interest in these Regulations.

8. Impact

8.1 No regulatory impact assessment has been prepared in respect of these Regulations. A regulatory impact assessment in respect of the WA03 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 regime. Copies can be obtained from Water Supply and Regulation Division, Department for Environment, Food and Rural Affairs (Defra), 55 Whitehall, London SW1A 2EY or from Defra's website at www.defra.gov.uk/environment/water/legislation.

8.2 The Regulations will reduce administrative burdens on the public sector and stakeholders. The Regulations reduce the need for applications to be made to the Secretary of State or the National Assembly for Wales for individual exemptions from the prohibitions in sections 66I and 66J in those areas where there are no policy issues at stake.

9. Contact

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