

2005 No. 3076

WATER INDUSTRY, ENGLAND AND WALES

**The Water Supply Licence (New Customer Exception)
Regulations 2005**

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| <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 17D(7) and 213(2)(d), (e) and (f) of the Water Industry Act 1991(a),

and

the National Assembly for Wales acting in exercise of the powers conferred upon it by sections 17D(7) and 213(2)(d), (e) and (f) of the Water Industry Act 1991 in relation to premises supplied with water using the 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 Licence (New Customer Exception) Regulations 2005 and shall come into force on 1st December 2005.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Water Industry Act 1991;

“the Authority” means, until the coming fully into force of section 36(1) of the Water Act 2003(b) (transfer to the Authority and the Consumer Council for Water of functions, property etc) the Director, and thereafter, the Water Services Regulation Authority; and

“subsidiary” has the meaning given by section 736 of the Companies Act 1985(c).

(a) 1991 c. 56; section 17D was inserted by section 56 of and Schedule 4, paragraphs 1 and 2 to, the Water Act 2003 (c. 37). The powers to make regulations under section 17D(7) are exercisable by the National Assembly for Wales (and not the Secretary of State) in relation to premises supplied with water using the supply system of a water undertaker whose area is wholly or mainly in Wales; see section 17D(12). In Chapter 1A of the Act, references to the supply system of a water undertaker are construed in accordance with section 17B(5) of the Act; see section 17B(5).

(b) 2003 c. 37.

(c) 1985 c. 6.

- (2) For the purposes of these Regulations—
- (a) “business” includes any business of managing premises for the purposes of letting or licensing its several parts for use by other persons as separate units, and, where any such business is carried on by a person in relation to those premises, he shall be treated as occupying those premises for that purpose; and
 - (b) for the purposes of whether activities constitute a business, it is immaterial whether or not they are carried on—
 - (i) for gain or reward; or
 - (ii) with one or more other persons.
- (3) For the purposes of these Regulations any two bodies corporate are interconnected if—
- (a) one of them is a body corporate of which the other is a subsidiary, or
 - (b) both of them are subsidiaries of the same body corporate,

and in these Regulations “interconnected bodies corporate” shall be construed accordingly and “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of whom are interconnected with each other.

New customer exception

3.—(1) Where a licensed water supplier who has entered into an undertaking with a person (A) to give a supply of water to any premises subsequently enters into an undertaking with another person (B) to give a supply of water to those premises, the licensed water supplier is not, for the purposes of section 17D(2) of the Act, to be treated as entering into an undertaking with a new customer to give a supply of water to those premises if—

- (a) in a case where A and B are interconnected bodies corporate, the condition in paragraph (2) is satisfied or the condition referred to in sub-paragraph (b) is satisfied; or
- (b) in any other case, the condition in paragraph (3) is satisfied.

(2) The condition referred to in paragraph (1)(a) is that—

- (a) at the time the undertaking was entered into with A, the whole of the premises was occupied for the purposes of a business by a member of the group of interconnected bodies corporate of which A and B are members; and
- (b) at the time that the undertaking is entered into with B—
 - (i) the whole of the premises is occupied for the purposes of a business by a member of the group of interconnected bodies corporate of which A and B are members;
 - (ii) the business referred to in sub-paragraph (i) is the same as that which was being carried on immediately before the undertaking with A ceased to apply;
 - (iii) the member referred to in sub-paragraph (i) intends to carry on that business for at least the duration of the undertaking with B; and
 - (iv) the volume of water estimated to be supplied to the premises annually pursuant to the undertaking with B is the same as, or more than, that which was supplied under the undertaking with A in the year ending when that undertaking ceased to apply.

(3) The condition referred to in paragraph (1)(b) is that—

- (a) the whole of the premises is occupied by B, and immediately before B’s occupation was occupied by A, for the purposes of a business; and
- (b) at the time that the undertaking is entered into with B—
 - (i) B’s business referred to in sub-paragraph (a) is the same as that which was being carried on by A immediately before A ceased to occupy the premises;
 - (ii) B intends to carry on that business for at least the duration of that undertaking; and
 - (iii) the volume of water estimated to be supplied to the premises annually pursuant to that undertaking is the same as, or more than, that which was supplied under the undertaking with A in the year ending when that undertaking ceased to apply.

Guidance issued by the Authority

4. Any guidance issued by the Authority with the approval of the Secretary of State under section 17D(3) of the Act shall apply to any estimate of the quantity of water to be supplied to any premises for the purposes of regulation 3 as it does to any estimate for the purposes of section 17D(2) of the Act.

Determinations by the Authority

5.—(1) The Authority may determine, in a case referred to it by a licensed water supplier or an actual or potential customer of a licensed water supplier, whether that licensed water supplier is, pursuant to regulation 3, not to be treated as entering into an undertaking with a new customer to give a supply of water to any premises.

(2) Section 195(2)(bc) (the Authority's register)(a) of the Act shall have effect as if, at the end, there were inserted "or regulation 5(1) of the Water Supply Licence (New Customer Exception) Regulations 2005".

(3) Section 195A (reasons for decisions)(b) of the Act shall apply to the making of a determination under paragraph (1) as it applies to the making of a determination under section 17E of the Act.

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

(a) Section 195(2)(bc) was inserted by section 101 of and Schedule 8, paragraph 42(3) to, the Water Act 2003. Under section 36(2) of the Water Act 2003, references to the Director in the Water Industry Act 1991 have effect as references to the Authority.

(b) Section 195A was inserted by section 51 of the Water Act 2003.

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 in order to supply water to eligible premises of customers. A number of requirements must be satisfied in relation to each of the premises supplied by a licensed water supplier. One such (“the threshold requirement”) is that, at the time when the licensed water supplier first enters into an undertaking with a customer to give a supply of water to any premises, the total quantity of water estimated to be supplied to the premises annually pursuant to the undertaking is not less than 50 megalitres (or such different quantity of water as may be substituted by the Secretary of State or the National Assembly for Wales in regulations) (section 17D(2) of the Act).

These Regulations provide for the circumstances in which a licensed water supplier is not, for the purposes of the threshold requirement, to be treated as entering into an undertaking with a new customer to give a supply of water to any premises. In these circumstances, a new customer can be supplied by the licensed water supplier without the need to assess the volume to be supplied to the customer’s premises.

Regulation 3(1)(a) and (2) has the effect that where a corporate group changes the subsidiary which contracts with a licensed water supplier, that new subsidiary is not to be treated as a new customer provided that the whole set of premises continues to be occupied by the same corporate group as at the date of the original undertaking and the business and water consumption at those premises continues as before.

Regulation 3(1)(b) and (3) has the effect that, where there is a change in the person occupying a set of premises, the new person is not to be treated as a new customer provided that the whole set of premises is acquired by that person and the business and water consumption at those premises continues as before. This may be the case with certain asset acquisitions and certain structural reorganisations (including where a customer changes from being an unincorporated body to an incorporated body, and changes in the way that public sector customers are legally constituted).

Regulation 4 provides for guidance issued by the Water Services Regulation Authority (and until it is fully established, the Director General of Water Services) (“Ofwat”) under section 17D(3) of the Act to apply in relation to these Regulations.

Regulation 5 provides for Ofwat to make determinations under these Regulations, for these determinations to be entered in a public register maintained by Ofwat and for the publication of notice of reasons for each determination.

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, 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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