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STATUTORY INSTRUMENTS

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**2019 No. 1259**

**WATER, ENGLAND**

**The Isles of Scilly (Application  
of Water Legislation) Order 2019**

*Made - - - - 16th September 2019*

*Laid before Parliament 17th September 2019*

*Coming into force in accordance with article 2*

The Secretary of State makes the following Order in exercise of the powers conferred by—

- (a) section 193(2) of the Water Act 1989(1), and
- (b) section 222(2) of the Water Industry Act 1991(2).

The Council of the Isles of Scilly has, in accordance with section 193(2) of the Water Act 1989, applied to the Secretary of State to make an order under that section of that Act.

In accordance with section 222(2) of the Water Industry Act 1991, the Secretary of State has consulted the Council of the Isles of Scilly.

**Citation**

1. This Order may be cited as the Isles of Scilly (Application of Water Legislation) Order 2019.

**Commencement**

- 2.—(1) Articles 1 to 4 come into force on 1st November 2019.
- (2) Article 5 comes into force on 1st April 2020.

**Application of the Water Act 1989**

3.—(1) The following provisions of the Water Act 1989 apply to the Isles of Scilly as they apply to the rest of England—

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- (1) 1989 c. 15. Section 189 was amended by the Water Consolidation (Consequential Provisions) Act 1991 (c.60), section 3 and Schedule 3, Part 1 (with section 2, Schedule 2 paragraphs 10, 14(1) and 15); and by S.I. 2009/1941 Schedule 1, paragraph 101(3). Section 192 was amended by the Planning (Consequential Provisions) Act 1990 (c.11), section 4 and Schedule, paragraph 81(3); and by the Water Consolidation (Consequential Provisions) Act 1991 (c.60), section 3 and Schedule 3, Part I (with section 2, Schedule 2 paragraphs 10, 14(1) and 15). Section 194 was amended by the Employment Rights Act 1996 (c. 18), Schedule 3, paragraph 1.
  - (2) 1991 c. 56. Section 222 was substituted by section 118(4) of the Environment Act 1995 (c. 25). The Water Industry Act 1991 was last amended in relation to England by S.I. 2019/558.

- (a) section 4;
- (b) section 189;
- (c) section 192;
- (d) section 194;
- (e) Schedule 2.

This is subject to the following modifications.

- (2) Section 4 is to be read as if—
  - (a) in subsection (1)—
    - (i) paragraph (a) were omitted;
    - (ii) for paragraph (b) there were substituted—
      - “(b) any scheme under Schedule 2 to this Act for the transfer of any property, rights and liabilities of the Council of the Isles of Scilly to a successor company shall come into force.”;
  - (b) subsections (2) to (6) were omitted.
- (3) Section 189(1) is to be read as if for the definition of “successor company” there were substituted—
  - ““successor company” means a relevant undertaker within the meaning of section 219(1) of the Water Industry Act 1991;”.
- (4) Schedule 2 is to be read in accordance with paragraphs (5) to (8).
- (5) Paragraph 1 is to be read as if—
  - (a) for sub-paragraph (1) there were substituted—
    - “(1) The Council of the Isles of Scilly shall make a scheme under this Schedule for the transfer of property, rights and liabilities of the Council of the Isles of Scilly to the successor company.
    - (1A) The property, rights and liabilities to be transferred by the scheme under sub-paragraph (1) are such of the property, rights and liabilities of the Council as are required for, or as otherwise relate to, the supply of water or the provision of sewerage services in the Isles of Scilly.”;
  - (b) in sub-paragraph (2), for “a water authority” there were substituted “the Council of the Isles of Scilly”;
  - (c) for sub-paragraphs (4) and (5) there were substituted—
    - “(4) If—
      - (a) the Council of the Isles of Scilly fails, before such time as may be notified by the Secretary of State to the Council as the latest time for the submission of a scheme under this Schedule, to submit such a scheme for the approval of the Secretary of State; or
      - (b) the Secretary of State decides not to approve a scheme that has been submitted by the Council of the Isles of Scilly (either with or without modifications),
 the Secretary of State may make a scheme under this Schedule for the transfer of the property, rights and liabilities mentioned in paragraph (1A) to the successor company.
  - (5) If—
    - (a) at any time after a scheme under this Schedule has come into force in relation to the property, rights and liabilities of the Council of the Isles of Scilly, the Secretary of State considers it appropriate to do so; and

- (b) the successor company has consented to the making of the order, the Secretary of State may by order provide that that scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.”;
  - (d) sub-paragraph (7) were omitted;
  - (e) in sub-paragraph (8), for “a water authority” there were substituted “the Council of the Isles of Scilly”.
- (6) Paragraph 2 is to be read as if—
  - (a) for sub-paragraphs (1) to (3) there were substituted—
    - “(1) Where a scheme under this Schedule comes into force on the transfer date, this paragraph shall have effect on that date so as, in accordance with the scheme’s provisions and without further assurance, to transfer to the successor company such of the property, rights and liabilities as are allocated to the successor company in accordance with the scheme.
    - (2) For the purpose of making the transfer of any property, rights or liabilities to the successor company the provisions of a scheme under this Schedule may allocate to the successor company such property, rights and liabilities to which the Council of the Isles of Scilly may become entitled or subject after the making of the scheme and before the transfer date as may be described in the scheme.
    - (3) The property, rights and liabilities of the Council of the Isles of Scilly that shall be capable of being transferred in accordance with a scheme under this Schedule shall include—
      - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the Council of the Isles of Scilly;
      - (b) property situated anywhere in the United Kingdom or elsewhere;
      - (c) rights and liabilities under enactments;
      - (d) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.”;
  - (b) sub-paragraph (4) were omitted;
  - (c) in sub-paragraph (6), for “a water authority at the passing of this Act” there were substituted “the Council of the Isles of Scilly on 1st November 2019”.
- (7) Paragraph 3(2) is to be read as if—
  - (a) in paragraph (a), for “the water authority” there were substituted “the Council of the Isles of Scilly”;
  - (b) in paragraphs (b) to (d), for “a water authority”, in each place it occurs, there were substituted “the Council of the Isles of Scilly”;
  - (c) in paragraph (d), for “the water authority’s successor company or the Authority” there were substituted “the successor company”;
  - (d) for paragraph (e) there were substituted—
    - “(e) that the effect of any transfer under the scheme in relation to contracts of employment with the Council of the Isles of Scilly is not to be to terminate any of those contracts but is to be that periods of employment with the Council are to count for all purposes as periods of employment with the successor company;”;
  - (e) paragraphs (f) and (g) were omitted.
- (8) Paragraph 4 is to be read as if—

- (a) in the heading, for “water authorities” there were substituted “the Council of the Isles of Scilly”;
- (b) for sub-paragraphs (1) to (6) there were substituted—
  - “(1) A scheme under this Schedule may provide for the imposition of duties on the Council of the Isles of Scilly from which transfers are made by virtue of the scheme, and on the successor company, to take all such steps as may be requisite to secure that the vesting in the successor company, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
  - (2) The provisions of a scheme under this Schedule may require the Council of the Isles of Scilly to comply with any directions of the successor company in performing any duty imposed on the Council by virtue of a provision included in the scheme under sub-paragraph (1).
  - (3) A scheme under this Schedule may provide that, until the vesting of any foreign property, right or liability of the Council of the Isles of Scilly in the successor company is effective under the relevant foreign law, it shall be the duty of the Council to hold that property or right for the benefit of, or to discharge that liability on behalf of, the successor company.
  - (4) Nothing in any provision included by virtue of this paragraph in a scheme under this Schedule shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting by virtue of the scheme in the successor company, of any foreign property, right or liability.
  - (5) The Council of the Isles of Scilly shall have all such powers as may be requisite for the performance of any duty imposed on it by any provision included by virtue of this paragraph in a scheme under this Schedule; but such a scheme may require the successor company to act on behalf of the Council (so far as possible) for the purposes of, or in connection with, the performance of any such duty.
  - (6) A scheme under this Schedule may provide that any foreign property, rights or liabilities that are acquired or incurred by the Council of the Isles of Scilly after the scheme comes into force are immediately to become property, rights or liabilities of the successor company; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the Council of the Isles of Scilly when the scheme comes into force.”;
- (c) in sub-paragraph (8)—
  - (i) for “a water authority” there were substituted “the Council of the Isles of Scilly”;
  - (ii) for “in such proportions” there were substituted “to such extent”;
  - (iii) for the words from “the water authority’s” to the end, there were substituted “the successor company”.

#### **Application of the Water Industry Act 1991**

4.—(1) The Water Industry Act 1991 applies to the Isles of Scilly as it applies to the rest of England.

This is subject to the following modifications.

- (2) Section 7 is to be read as if—
  - (a) in the heading, for “Continuity” there were substituted “Original Isles of Scilly variation, continuity”;
  - (b) in subsection (1), at the end there were inserted—

“;

but nothing in this subsection shall impose any duty on the Secretary of State to secure that such appointments are made in respect of the Isles of Scilly before 1st April 2020”;

(c) after subsection (2) there were inserted—

“(2A) In this Chapter, the “original Isles of Scilly variation” means the variation of an appointment under subsection (2) to include the Isles of Scilly in circumstances where there is no existing relevant undertaker for the Isles of Scilly.”.

(3) Section 8(5) is to be read as if—

(a) in the words before paragraph (a), after “relevant undertaker” there were inserted “or after making the original Isles of Scilly variation”;

(b) in paragraph (a), after “existing appointee” there were inserted “or, in the case of the original Isles of Scilly variation, the Council of the Isles of Scilly”.

(4) Section 10 is to be read as if—

(a) for subsections (1) and (2) there were substituted—

“(1) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which—

(a) a company becomes a relevant undertaker for the Isles of Scilly by virtue of the original Isles of Scilly variation; or

(b) a company is replaced by another as a relevant undertaker by an appointment or variation,

under this Chapter.

(2) Subsections (3) to (4) apply where, by such an appointment or variation, a company (“the new undertaker”) is to—

(a) become the relevant undertaker for the Isles of Scilly by virtue of the original Isles of Scilly variation; or

(b) replace another company as a relevant undertaker,

but the appointment or variation has not come into force.”;

(b) in subsection (3)—

(i) for paragraph (d) there were substituted—

“(d) sections 156 and 158 to 167 and Schedule 11;”

(ii) in paragraph (e), for “171” there were substituted “172”.

(5) Section 44(5) is to be read as if before paragraph (a) there were inserted—

“(za) 1st April 2025;”.

(6) Section 51(6) is to be read as if before paragraph (a) there were inserted—

“(za) 1st April 2025;”.

(7) Section 51B is to be read as if after subsection (2) there were inserted—

“(2A) But no application under subsection (2) may be made before 1st April 2025.”.

(8) Section 101(5) is to be read as if before paragraph (a) there were inserted—

“(za) 1st April 2025;”.

(9) Section 105 is to be read as if after subsection (3) there were inserted—

“(3A) But no appeal under subsection (1) may be made before 1st April 2025.”.

- (10) Section 106 is to be read as if after subsection (3) there were inserted—  
“(3A) But no notice under subsection (3) may be given before 1st April 2025.”.
- (11) Section 219(1) is to be read as if—  
(a) in the definition of “local authority”, at the end there were inserted “and, in relation to the Isles of Scilly, means the Council of the Isles of Scilly”;  
(b) at the appropriate place there were inserted—  
““original Isles of Scilly variation” has the meaning given in section 7(2A);”.
- (12) Schedule 2 is to be read in accordance with paragraphs (13) to (17).
- (13) Paragraph 1 is to be read as if—  
(a) in sub-paragraph (1), for “(3A)” there were substituted “(3B)”;  
(b) after sub-paragraph (3A) there were inserted—  
“(3B) The fourth case in which this Schedule applies is where—  
(a) a person or body is supplying water or providing sewerage services on the Isles of Scilly (“the existing supplier”); and  
(b) a company is to become a relevant undertaker for the Isles of Scilly by virtue of the original Isles of Scilly variation (“the new appointee”).”;
- (c) in sub-paragraph (4), for the definition of “existing appointee” and “new appointee” there were substituted—  
““existing appointee” shall be construed in accordance with sub-paragraph (2) or (3) according to whether this Schedule is applying in the case mentioned in the first or second of those sub-paragraphs;  
“new appointee” shall be construed in accordance with sub-paragraph (2), (3) or (3B) according to whether this Schedule is applying in the case mentioned in the first, second or third of those sub-paragraphs;”.
- (14) Paragraph 2 is to be read as if after sub-paragraph (7A) there were inserted—  
“(7B) In a case specified in paragraph 1(3B) the preceding provisions of this paragraph shall have effect as if any reference to the existing appointee were a reference to existing supplier.”.
- (15) Paragraph 3 is to be read as if after sub-paragraph (7) there were inserted—  
“(8) In a case specified in paragraph 1(3B) the preceding provisions of this paragraph shall have effect as if any reference to the existing appointee were a reference to existing supplier.”.
- (16) Paragraph 5 is to be read as if after sub-paragraph (3) there were inserted—  
“(4) In a case specified in paragraph 1(3B) the preceding provisions of this paragraph shall have effect as if any reference to the existing appointee were a reference to existing supplier.”.
- (17) Paragraph 6 is to be read as if after sub-paragraph (9) there were inserted—  
“(10) In a case specified in paragraph 1(3B) the preceding provisions of this paragraph shall have effect as if any reference to the existing appointee were a reference to existing supplier.”.

## **Revocation**

5. The Isles of Scilly (Water and Sewerage) (Miscellaneous Provisions) Order 1990(3) is revoked.

16th September 2019

*Rebecca Pow*  
Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order applies the following primary legislation to the Isles of Scilly—

- (a) certain provisions of the Water Act 1989 (c. 15), and
- (b) the Water Industry Act 1991 (c. 56) in its entirety.

This Order also makes various modifications to those provisions for the purposes of their application to the Isles of Scilly. In summary—

- (a) section 4 and Schedule 2 of the Water Act 1989 are modified so that a scheme is to be made for the transfer of certain property, rights and liabilities of the Council of the Isles of Scilly to a relevant undertaker (within the meaning of section 219(1) of the Water Industry Act 1991) (see article 3(2) and (5) to (8));
- (b) sections 7 and 8 of the Water Industry Act 1991 are modified in relation to the variation of an existing relevant undertaker’s appointment to include the area of the Isles of Scilly in circumstances where there is no existing relevant undertaker for the Isles of Scilly (see article 4(2) and (3));
- (c) section 10 and Schedule 2 of that Act are modified so that a scheme may be made for the transfer of certain property, rights and liabilities of any person or body to that relevant undertaker (see article 4(4) and (13) to (17)).

This Order also revokes the Isles of Scilly (Water and Sewerage) (Miscellaneous Provisions) Order 1990 (S.I. 1990/524).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.