

WATER ACT 2014

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

32. The majority of the Water Act extends to England and Wales only. However, there are two measures that also extend to Scotland – creation of a cross-border water and sewerage retail market between England and Wales and Scotland, and extension of the environmental permitting regime (in relation to fish passages only) to the Border River Esk but it will not apply to the lower River Tweed or its tributaries in England. Furthermore, the extent of the flood insurance provisions is UK-wide. The provisions concern financial services which is a reserved matter.
33. Significant parts of water industry and environment law are devolved in relation to Wales. The areas of appointment of water and sewerage undertakers do not follow the national boundary. Under section 108 of, and paragraph 19 of Schedule 7 to, the Government of Wales Act 2006, the National Assembly for Wales has legislative competence (amongst other things) in relation to “water supply” and “water resources management (including reservoirs)” in relation to Wales. The National Assembly for Wales does not have legislative competence in relation to sewerage services, the “appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales” or the licensing and regulation of licensed water suppliers, (apart from regulation of licensed activities using the supply systems of water undertakers wholly or mainly in Wales). The Welsh Ministers have executive competence in certain matters relating to water and sewerage undertakers whose areas are wholly or mainly in Wales and in other matters relating to water and sewerage.
34. Generally, the Act gives the Welsh Ministers separate powers to commence the licensing arrangements in relation to the areas of water and sewerage undertakers that are wholly or mainly in Wales (Dee Valley Water, Albion Water and Dwr Cymru/Welsh Water). Until then, in those areas, the existing water supply licensing regime will continue to apply, although the new approach to arrangements between licensees and undertakers has effect in relation to all of England and Wales. The Welsh Ministers can remove the threshold requirement for retail water supply under section 3, so far as it relates to premises supplied using the supply system of water undertakers whose areas are wholly or mainly in Wales.
35. Water industry and environment law are wholly devolved in relation to Scotland. The Act includes provisions that will help establish a cross-border market in water and sewerage retail services. Secondary legislation will enable applications for water services or sewerage services licences made to the Water Industry Commission for Scotland (WICS) under section 6 of the Water Services etc. (Scotland) Act 2005 to be treated as applications for a retail authorisation or a restricted retail authorisation to Ofwat under the WIA when the application is forwarded by WICS to Ofwat. The Scottish Ministers have similar powers to allow WICS to grant licences to applicants that submit applications to Ofwat.
36. The Government proceeds in accordance with a convention that it will not normally ask Parliament to legislate in relation to matters within the legislative competence of the National Assembly for Wales, the Northern Ireland Assembly or the Scottish Parliament without their respective consents.