

WATER ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1

Water Industry

Chapter 1

Water Supply Licences and Sewerage Licences

Expansion of water supply licensing

Section 1: Types of water supply licence and arrangements with water undertakers

37. This section replaces the existing section 17A of the WIA with a provision on the issue of water supply licences. New section 17A allows Ofwat to issue water supply licences which give the holder certain rights with respect to the water supply system and provision of water supply services to eligible premises in undertakers' areas in England and Wales. "Eligible premises" in these notes means premises that may be supplied under a retail or restricted retail authorisation as appropriate (see below).
38. Subsections (2) to (4) extend the concept of different authorisations for carrying out different activities under the water supply licence. The purposes of these authorisations are set out in paragraphs 1 to 8 of Schedule 2A, inserted by Schedule 1 to the Act – see below. The existing retail and supplementary authorisations are broadly retained for licensees using the supply system of an undertaker wholly or mainly in Wales, under the names "a restricted retail authorisation" and "a supplementary authorisation" respectively.
39. This section also introduces a new section 17AA into the WIA which outlines in subsections (1) and (2) the persons that Ofwat must consult before issuing licences with certain authorisations. The Government's intention is that these consultees can then make an assessment of whether the applicant is a suitable person for inputting water into the public supply system. This includes an obligation to consult the Chief Inspector of Drinking Water, the Environment Agency and the Natural Resources Body for Wales. It also includes an obligation to consult the Welsh Ministers on the appointment of licensees whose authorisations allow them to introduce water into the supply systems of undertakers wholly or mainly in Wales.
40. Subsection (3) of new section 17AA excludes water undertakers from holding a water supply licence, which means they must set up a company for example, to apply for a water supply licence if they want to enter the market.
41. The effect of subsections (4) and (5) of new section 17AA is to allow only limited companies to hold a water supply licence with a wholesale or supplementary authorisation. This allows these licensees to be subject to the special administration regime under sections 23 to 25 of the WIA should they become insolvent or fail to meet their statutory obligations where their supplies are designated as strategic under sections 66G and 66H of the WIA. This would allow for the continuation of essential

water services to customers if the limited company gets into difficulties (administration and by extension special administration is a mechanism for handling cases involving insolvent companies rather than bankrupt individuals, partnerships etc.).

42. This section also gives effect to Schedules 1 and 2. Schedule 5 separately enables the Welsh Ministers to commence the reformed regime in Wales.

Section 2: The supply system of a water undertaker

43. This section adds a new subsection (4A) to section 17B of WIA that extends the meaning of a water undertaker's "supply system" for the purposes of activities under a water supply licence in the areas of water undertakers wholly or mainly in England. The current definition only covers the mains and pipes of a water undertaker downstream of a water treatment works (often called the "potable" supply system) and discrete non-potable supply systems. This is extended to cover treatment works, reservoirs and other water storage facilities. This means that a water supply licensee with a wholesale authorisation will have more options to introduce water for the purpose of supplying premises. The existing definition for the supply systems used by undertakers wholly or mainly in Wales is retained.

Section 3: The threshold requirement

44. Currently under section 17A(3)(b) of the WIA, licensees may only supply to premises whose water consumption exceeds the threshold requirement set out in section 17D. In order to allow non-household customers more generally to switch to water supply by a licensee, the UK Government would expect to repeal this threshold for premises within the areas of water undertakers that are wholly or mainly in England at the same time as the introduction of the new water supply licensing arrangements. This would be done by commencing section 1 and Schedule 1 to the Act which would bring new Schedule 2A to the WIA into force. Section 1 substitutes all of section 17A and, under paragraph 7(b) of inserted Schedule 2A, only water supply licensees holding restricted retail authorisations (that is, those using the networks of water undertakers based wholly or mainly in Wales) would remain subject to the threshold requirement.
45. This would remain the case unless and until the new licensing arrangements were fully commenced in Wales, or paragraph 7(b) was otherwise repealed.
46. Under section 3, the power to repeal the threshold could also be exercised before the introduction of the new licensing arrangements by repealing section 17A(3)(b) of the WIA. This power would lie with the Secretary of State for premises in undertaker areas wholly or mainly in England and the Welsh Ministers in undertaker areas that are wholly or mainly in Wales. If section 17A(3)(b) was repealed in relation to undertakers wholly or mainly in Wales, paragraph 7(b) of Schedule 2A would also be repealed, thereby preventing it from ever coming into force.