

WATER ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 1

Water Industry

Chapter 2

Water and Sewerage Undertakers

Agreements to adopt infrastructure

Section 10: Agreements by water undertakers to adopt infrastructure

85. This section amends section 51A and replaces section 51B and 51C with provisions to regulate arrangements between a water undertaker and any person seeking to provide water mains or supply pipes for eventual adoption by the water undertaker (section 51A agreements). These provisions apply when such a person makes an application to Ofwat for a determination. Such a person might be a developer constructing new premises that it wants connected to the water supply network or a pipe-laying company acting on a developer's behalf. Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes. An agreement affected by section 51A includes one which was made of the parties' own volition and one made or varied by order.
86. New section 51B allows Ofwat, on the application of a person wanting a water undertaker to adopt his mains or pipes, to make an order for future adoption containing such terms and conditions as Ofwat specifies. Ofwat may not force the adoption of mains or pipes by the undertaker if there is a contravention of any of the requirements of regulations made under section 74 of the WIA. An agreement imposed by order takes effect as an agreement between the parties and would therefore be enforceable by private law.
87. New section 51C applies similar provisions as under new section 51B when any party to an existing section 51A agreement wishes to vary or terminate the adoption arrangement.
88. New section 51CA requires Ofwat to produce a code relating to section 51A agreements. The code may set out standard or specific terms and conditions between the parties which may be mandatory or not; may include principles for determining what terms and conditions are suitable for particular section 51A agreements, or more generally; the circumstances in which it is appropriate for the person seeking adoption to carry out works instead of the water undertaker and may also include the procedures for when a request to agree is received by an undertaker and steps to be taken to reach, amend or terminate an agreement. Ofwat has a power of direction where it believes an undertaker is not acting in accordance with the code. The direction is enforceable under section 18 of the WIA.

89. New section 51CB outlines the procedures that Ofwat must follow when producing a code, including a requirement to consult the DWI and other relevant persons. Ofwat must specify the consultation period in which consultees may comment. Within 28 days from the end of that consultation period the Secretary of State and the Welsh Ministers may direct Ofwat not to issue the code or to amend it as per a direction. The Welsh Ministers' powers in this regard only relate to a code, or to so much of a code, that relates to arrangements with water undertakers wholly or mainly in Wales. The relevant minister can only use their power of direction once in relation to the first edition of the code.
90. New section 51CC outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to a code are minor or urgent in nature.
91. New section 51CD allows Ofwat to publish and revise rules about charges which may be levied by water undertakers under section 51A agreements. Ofwat is also required to revise the rules, where necessary, if the Secretary of State or the Welsh Ministers issue revised charging guidance under new section 51CG (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). Ofwat has a power of direction, enforceable by section 18, if it believes an undertaker is not acting in accordance with the charging rules.
92. New section 51CE outlines the procedure Ofwat must follow before issuing rules on charging, including a requirement to consult. In preparing the draft rules Ofwat must have regard to any charging guidance published by the Secretary of State or the Welsh Ministers (see below and also section 38 of this Act which provides for further guidance on charging rules). Ofwat must specify the consultation period in which consultees may comment. Within 28 days from the end of that consultation period, the Secretary of State or the Welsh Ministers may direct Ofwat not to issue the rules where the rules relate to agreements to adopt infrastructure between water undertakers wholly or mainly in England or Wales respectively. Ofwat may not publish the rules until this 28 day period has elapsed.
93. New section 51CF outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.
94. New section 51CG enables the Secretary of State and the Welsh Ministers to produce and revise charging guidance to Ofwat relevant to agreements to adopt infrastructure between water undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers are required to consult each other and relevant persons on their draft guidance before it is published.