

# WATER ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 1

#### Water Industry

#### Chapter 2

#### *Water and Sewerage Undertakers*

#### Relevant undertakers' charges

#### *Section 16: Charges schemes*

118. The section substitutes subsections (6) – (6C) for subsections (6) to (9) of section 143 of the WIA. This removes the requirement that undertakers' charges schemes do not take effect until approved by Ofwat. However, undertakers will be required to make their charges schemes in accordance with enforceable rules which Ofwat may produce under section 143B. There are additional requirements in section 143(6) that charges schemes must comply with. New section 143(6A) to (6C) require Ofwat to issue rules requiring undertakers to consult the Consumer Council for Water when producing and revising their charges schemes.
119. Subsection (2) inserts new sections 143B to 143E into the WIA. New section 143B describes the rules and section 143C sets out the process by which the rules are to be produced. Ofwat is required to revise the rules, where necessary, if the Secretary of State or the Welsh Ministers issue revised charging guidance under new section 143D (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). also gives Ofwat a power of direction, enforceable under section 18 for when Ofwat thinks an undertaker is not acting in accordance with the rules. The direction might, for example, direct that schemes be replaced the following charging year or, if absolutely necessary, in year, or to take such other action as is appropriate – for example for the undertaker to conduct better research into its customer base.
120. New section 143B(7) reproduces the effect of the provision in previous section 143(9) that Ofwat cannot exercise this power for the purpose of limiting the total revenues of relevant undertakers from charges fixed by, or in accordance, with charges schemes.
121. New section 143C requires Ofwat to consult relevant persons on its rules in draft. In making the rules, Ofwat must have regard to guidance which the Secretary of State and the Welsh Ministers must produce on the content of Ofwat's rules (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). 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 affect undertakers wholly or mainly in England or Wales respectively. The rules may not be published before these 28 days have elapsed.

122. New section 143D outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.
123. New section 143E permits the Secretary of State and the Welsh Ministers to produce charging guidance to Ofwat on charges for 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 respective guidance.

### ***Section 17: Rules about charges for connections etc***

124. This section inserts new sections 144ZA to 144ZB into the WIA. New section 144ZA permits Ofwat to publish rules about charges which may be levied by water undertakers and sewerage undertakers for connections to, and the provision of, water mains, public sewers and some associated infrastructure. 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 144ZD (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). These rules replace certain existing provisions in the WIA relating to various financial requirements that may be imposed by a water undertaker in return for that undertaker carrying out its duties or obligations under the sections amended by sections 18, 19 and 20 of the Act. The rules may include charges that may be imposed, and methods for their calculation, as well as provision as to security that may be required. The section gives Ofwat a power of direction, enforceable under section 18 if Ofwat thinks an undertaker is not acting in accordance with the rules.
125. New section 144ZB requires Ofwat to have regard to ministerial guidance issued under section 144ZD and to consult relevant persons on its 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 affect undertakers wholly or mainly in England or Wales respectively. The rules may not be published before these 28 days have elapsed.
126. New section 144ZC outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.
127. New section 144ZD requires the Secretary of State and the Welsh Ministers to produce charging guidance to Ofwat on charges imposed by 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 respective guidance.

### ***Section 18: Charges for providing a water main etc***

128. This section makes several amendments to the WIA to allow for charging rules under new section 144ZA (inserted by section 17) to be the basis on which charges for new connections to an undertaker's water supply system are made.
129. Subsections (2) to (5) make changes to various provisions that allow a water undertaker to impose charges and require security in respect of things done under section 41 (duty to provide a water main), section 45 (duty to make domestic connections to a water main), and section 46 (duties to carry out ancillary works) so that the charges may be set in accordance with Ofwat's charging rules under section 144ZA Paragraph 54 to 57 of Schedule 7 to the Act repeal further related provisions including sections 43 and 43A which contain methods for calculating aspects of certain charges.

### ***Section 19: Charges for providing a public sewer etc***

130. This section makes several amendments to the WIA to allow for charging rules under new section 144ZA (inserted by section 17) to be the basis on which charges for new connections to an undertaker's sewerage system are made.

131. Subsections (2) to (5) make changes to various provisions that allow a sewerage undertaker to impose charges and require security in respect of things done under section 98 (duty to provide a sewer or lateral drain), section 101B (power to provide lateral drains) and section 107 (right of the undertaker to undertake the communication with a public sewer) so that the charges may be set in accordance with Ofwat's charging rules under section 144ZA. There is a further amendment to section 146(5) to reflect the language of the new approach, and Schedule 7 to the Act repeals further related provisions including sections 100 and 100A which contain methods for calculating aspects of certain charges.

***Section 20: Charges for moving pipes***

132. This section amends section 185 of the WIA which imposes a duty on a relevant undertaker to move pipes etc in certain cases. Subsection (5) currently enables the undertaker to recover expenses reasonably incurred in carrying out the works from the person who required the work to be done. The section amends subsection (5) so that instead the person who required the work to be done must pay the undertaker any charges the undertaker imposes in accordance with charging rules under section 144ZA.