

WATER ACT 2014

EXPLANATORY NOTES

SCHEDULES

Schedule 2: Water undertakers' duties as regards water supply licensees

316. This Schedule introduces amendments to Chapter 2A of Part 3 of the WIA to widen the duties of water undertakers to take into account new authorisations permitted under the water supply licence. These provisions will be subject to further change on the commencement of Schedule 5 to the Water Act 2014. Many of the changes in Schedule 5 relate to the removal of references to restricted retail and supplementary authorisations and the expansion of retail and wholesale authorisations to water undertaker areas wholly or mainly in Wales (see paragraph 309). Schedule 5 also affects functions of the Welsh Ministers and Ofwat.
317. [Paragraph 1](#) substitutes new sections 66A, 66AA, 66B and 66C for existing sections 66A, 66B, and 66C of the WIA. New sections 66A to 66C set out the duties imposed on a water undertaker when a water supply licensee requests access to its system under the new expanded water supply arrangements.
318. New section 66A of the WIA applies when a water supply licensee with a retail authorisation or restricted retail authorisation requests a water undertaker to permit the licensee to use its system to provide retail services to eligible premises in a water undertaker's area (including billing, reading meters, customer services etc.) using the undertaker's supply system. The water undertaker is under a duty in accordance with a section 66D agreement (see below) to take such steps as necessary to connect premises when asked to do so by the licensee and to enable the agreement to take effect.
319. The water undertaker can refuse to allow use of its supply system by the holder of a retail or restricted retail authorisation where the licensee has failed to secure a water supply or the water fittings in question are not compliant with any regulations produced under section 74 of the WIA. Subsection (8) provides for the situation where premises may be outside of the undertaker's geographic boundary but are connected to the undertaker's system for supply purposes. This might be the case for historic reasons or because it was cheaper to connect to that undertaker's system than the one in whose area the premises actually are. In such cases, the premises are to be treated as though they are within the area of the undertaker to whose pipes they are connected. This is to ensure that such premises may be served by a licensee and applies to all of sections 66A to 66C.
320. New section 66AA allows a water supply licensee with a retail authorisation or a restricted retail authorisation to request a supply of water from the water undertaker to serve eligible premises under the terms of the relevant authorisation. The supply of water must be made in accordance with a section 66D agreement (see below). The water undertaker must take the necessary steps required to enable that supply to be made unless the request: does not involve a supply to premises that consist of a whole or any part of the building or is not for the supply of water for domestic purposes (that is if the water is not for drinking, washing, cooking, central heating and sanitary purposes: see section 218 of the WIA); and where it involves unreasonable costs or puts the undertaker at risk of not meeting current and future obligations. The grounds

for refusal in sections 66A and 66AA reflect the provisions in section 55 of the WIA (supplies for non-domestic purposes).

321. New section 66B applies when a water supply licensee with a wholesale authorisation or supplementary authorisation requests a water undertaker to permit the licensee to introduce water into the undertaker's supply system for the purpose of supplying premises in the undertaker's area (though see section 66A(8)) under an appropriate retail or restricted retail authorisation. It also applies where a licensee with a supplementary authorisation agrees with the undertaker to introduce water into the undertaker's treatment works. The introduction must be made in accordance with a section 66D agreement (see below). The water undertaker is under a duty to take appropriate steps in accordance with the section 66D agreement (for example laying a main or pipes) to connect the licensee's source of supply or treatment works to undertaker's supply system and enable the introduction. The water undertaker does not have to permit the introduction of water if it will impact on its ability to meet current or future supply obligations or the undertaker would incur unreasonable costs in carrying out the work.
322. New section 66C allows a water supply licensee to request a supply of water from a neighbouring water undertaker so that particular supplies of water may be made using the primary water undertaker's supply system in accordance with a retail authorisation or restricted retail authorisation, and allows that licensee to request the primary water undertaker to permit the introduction of that water into the undertaker's supply system. The particular supplies of water which may be made in connection with the introduction of water differ according to whether the neighbouring undertaker is wholly or mainly in England or wholly or mainly in Wales and whether the supplies of water are to be made in accordance with a retail or restricted retail authorisation. The neighbouring water undertaker is subject to a duty with regard to providing the requested supply of water and the primary undertaker is under a duty with regard to permitting the requested introduction of water. The duties must be performed in accordance with a section 66D agreement (see below).
323. [Paragraph 2](#) inserts a new section 66CA of the WIA. Water supply licensees are able to refer for determination questions as to whether in any particular case the grounds are met for an undertaker to refuse to carry out its connection or supply duties under sections 66A to 66C. Before making a determination relating to certain provisions Ofwat must first, as appropriate, consult the Secretary of State, the Welsh Ministers, the Environment Agency and the Natural Resources Body for Wales.
324. [Paragraph 3](#) substitutes section 66D of the WIA. If undertakers and licensees cannot agree arrangements between them under sections 66A to 66C, prospective parties may apply to Ofwat for Ofwat to determine the terms of an agreement; where an agreement is in place, the parties to the agreement may apply to Ofwat for Ofwat to determine how the agreement is to be varied or if it is to be terminated. An order determining terms has effect as an agreement between the parties or, as the case may be, an existing agreement has effect subject to the provision made by an order (or is terminated by it). Orders deemed to be agreements and agreements varied by order, as well as actual agreements about the duties at new sections 66A to 66C, are referred to as "section 66D agreements". Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes.
325. [Paragraph 4](#) inserts new sections 66DA to 66DC on codes into the WIA.
326. New section 66DA gives Ofwat a power to issue one or more codes relating to section 66D agreements in specific cases or more generally. These codes may set out standard or particular terms and conditions between water undertakers and water supply licensees, and the procedures and steps to be taken to reach, amend or terminate an agreement. A code may also set out the procedures that Ofwat must follow in relation to the arrangements where parties are unable to come to agreement. Ofwat may direct

- parties to section 66D agreements to comply with the code. The direction is enforceable under section 18 of the WIA.
327. New section 66DB outlines the procedures that Ofwat must follow when producing a code, including the bodies which it must consult. 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, or the Secretary of State and the Welsh Ministers together, depending on who is affected by the code, 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 if, or to the extent that, the code relates to section 66D agreements about arrangements under section 66A, 66B or 66C involving only undertakers wholly or mainly in Wales. The Secretary of State and the Welsh Ministers may issue a joint direction for codes relating to section 66D agreements about arrangements under section 66C involving a primary and secondary water undertaker where one of the undertakers involved has an area wholly or mainly in Wales and the other has an area wholly or mainly in England. The Government's intention is that this will allow for the Secretary of State and the Welsh Ministers to ensure that their water quality and environmental responsibilities are accounted for in the code. Each power of direction may only be used once and only in relation to the first edition of the code.
328. New section 66DC 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.
329. [Paragraph 5](#) substitutes section 66E of the WIA. New section 66E requires Ofwat to publish and revise rules about charges which may be levied by water undertakers under section 66D agreements. 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 66ED (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). These rules replace the existing "costs principle" and must include provisions that would allow a customer to continue to benefit from a reduced charge previously imposed by an undertaker when it switches to a licensee. Ofwat may issue a direction to the undertaker if it thinks it is not complying with the rules and can compel both parties to modify a section 66D agreement to conform to the rules. The direction is enforceable under section 18 of the WIA.
330. New section 66EA provides for Ofwat's rules to include provisions on reductions in charges levied under section 66D agreements to allow a licensee with a retail (or restricted retail) authorisation who is party to a section 66D agreement to apply for a reduced charge when the licensee or the licensee's customers take steps to reduce pressure on the supply system of a water undertaker (for example by agreeing to take less water during high peak periods or during droughts etc). Ofwat may impose conditions on the parties to a section 66D agreement, in particular to pass on the reduced charge to customers, and may require the undertaker to notify Ofwat of the reduction.
331. New section 66EB sets out the procedure that Ofwat must follow when issuing charging rules, including a requirement to consult relevant persons. 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 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 and the Welsh Ministers may direct Ofwat not to issue the rules where the rules relate to agreements affecting only the supply systems of undertakers wholly or mainly in England or Wales respectively. The Secretary of State and the Welsh Ministers may issue a joint direction if the rules relate to any overlapping section 66D agreements (e.g. an agreement involving supply from a secondary undertaker, where one undertaker is wholly or mainly in Wales and the other is wholly or mainly in England, see section 66C).
332. New section 66EC outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.

333. New section 66ED permits the Secretary of State and the Welsh Ministers to produce charging guidance to Ofwat in relation to agreements affecting only the supply systems of undertakers wholly or mainly in England or Wales respectively, and joint guidance for overlapping section 66D agreements e.g. secondary supply agreement, as above). The Secretary of State and the Welsh Ministers are required to consult each other and relevant persons on their respective guidance.
334. [Paragraphs 6 to 9](#) make amendments to other provisions in the same Chapter of the WIA including those relating to the designations of strategic supplies (and hence the application of the special administration regime) and the offences which underpin the licensing regime.