

# **WATER ACT 2014**

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## **EXPLANATORY NOTES**

### **SCHEDULES**

#### ***Schedule 4: Sewerage undertakers' duties as regards sewerage licensees***

341. This Schedule inserts a Chapter 2A into Part 4 of the WIA which concerns the arrangements between licensees and sewerage undertakers that enable sewerage licensees to operate. These provisions will be changed on the commencement of Schedule 5. Schedule 5 will remove the words that restrict the operation of sewerage licences to undertaker areas wholly or mainly in England, and confer functions as regards Wales on the Welsh Ministers and Ofwat.
342. New section 117A applies where a sewerage licensee with a retail authorisation requests a sewerage undertaker to permit it to use the undertaker's sewerage system for the purpose of enabling the licensee to provide retail services to eligible premises using the undertaker's sewerage system. The sewerage undertaker is under a duty in accordance with a section 117E agreement (see below) to take such steps as necessary to connect premises when asked to do so by the licensee. The undertaker can refuse the request where the licensee has failed to secure a means of dealing with the sewage. Subsection (5) provides for the situation where premises may be outside of the undertaker's geographic boundary but are connected to the undertaker's sewerage system. 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.
343. New section 117B allows a sewerage licensee with a retail authorisation to request a sewerage undertaker to dispose of a corresponding amount of matter from its own system as that entering the system from the premises served. The sewerage undertaker must take such steps as necessary to enable disposal. The sewerage undertaker's duty to deal with the matter must be performed in accordance with a section 117E agreement (see below).
344. New section 117C allows a sewerage licensee with a wholesale authorisation to request a sewerage undertaker to permit the licensee to remove from the undertaker's sewerage system a corresponding amount of matter as that entering the system from premises served by the licensee's own or another licensee's retail authorisation. The sewerage undertaker must take such steps as necessary to enable the removal (for example connecting the sewerage system to a treatment works). This duty must be performed in accordance with a section 117E agreement (see below).
345. New section 117D allows a sewerage licensee with a disposal authorisation to request a sewerage undertaker to permit the licensee to extract any agreed amount of matter from the sewerage undertaker's system. The sewerage undertaker must take the necessary steps to enable the removal in accordance with a section 117E agreement (see below).
346. Under new section 117E, if undertakers and licensees cannot agree arrangements between them under sections 117A to 117D, 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. The order has effect as an agreement between the parties or, as the case may be, the existing agreement has effect subject to the provision made by the order (or is terminated by it). Orders deemed to be agreements and agreements varied by order, as well as actual agreements about the duties under sections 117A to 117D, are referred as “section 117E agreements”. Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes.

347. New section 117F gives Ofwat a power to issue one or more codes relating to section 117E agreements in specific cases or more generally. These codes may set out standard or particular terms and conditions between sewerage undertakers and sewerage licensees and the procedures and steps to be taken to reach, amend or terminate an agreement. Ofwat may direct parties to section 117E agreements to comply with the code. The direction is enforceable under section 18 of the WIA.
348. New section 117G 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 may direct Ofwat not to issue the code or to amend it as per a direction. A code may not be published until the 28 days has elapsed. This will enable the Secretary of State to ensure that his environmental responsibilities in relation to the sewerage industry are accounted for in the code.
349. New section 117H 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.
350. New section 117I requires Ofwat to publish rules about charges which may be levied by sewerage undertakers under section 117E 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 117M (see below and also see section 38 of this Act which inserts section 144ZE of the WIA (general guidance on charges)). The rules 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 117E agreement to conform to the rules. The direction is enforceable under section 18 of the WIA.
351. New section 117J allows Ofwat’s rules on charges levied under section 117G agreements to include provisions that would enable licensees holding retail authorisations to apply for a reduced charge when it or its customers take, or are prepared to take, steps to reduce pressure on the sewerage undertaker’s system (for example by recycling wastewater or treating surface or storm water for reuse on site). Ofwat may impose conditions on the sewerage undertaker and the sewerage licensee, in particular to pass on the reduced charge to customers, and may require the undertaker to notify Ofwat of the reduction.
352. New section 117K 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 (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 may direct Ofwat not to issue the rules. The rules may not be published until this 28 day period has elapsed.
353. New section 117L outlines the procedure that Ofwat must follow when it considers that revisions it intends to make to rules are minor or urgent in nature.

354. New section 117M permits the Secretary of State to produce guidance on the content of Ofwat's rules under new section 117I. The Secretary of State must consult any person as he sees fit before publishing the guidance.
355. New section 117N and 117O provide for the designation of certain sewerage services provided by sewerage licensees as "strategic". These broadly mirror the corresponding provisions for water supply. Designation of a strategic sewerage provision (or collective sewerage provision) would occur when Ofwat determines that the removal of one or more services provided by one or more sewerage licensees would impact on the sewerage undertaker's ability to maintain services to its own customers and meet its obligations to sewerage licensees under section 117B. Designation of a strategic sewerage services provision would make any sewerage licensee that is responsible for that strategic sewerage provision subject to the special administration regime under sections 23 to 25 of the WIA should it become insolvent or otherwise fail to meet its statutory obligations.
356. New sections 117P to 117S create new offences around the provision of sewerage services using a sewerage undertaker's system. Where a person is found guilty of making arrangements to provide unauthorised retail services under section 117P he would be liable to a fine not exceeding the statutory maximum on summary conviction (currently £5000) and on conviction on indictment to an unlimited fine.
357. Unauthorised extraction of matter from a sewerage undertaker's system is punishable under section 117Q by a fine of up to £20,000 on summary conviction; and by an unlimited fine on indictment. Where a company is prosecuted, the directors may also be prosecuted, and, if they were tried on indictment, would be punishable by imprisonment for up to two years. Only the Secretary of State or Ofwat may instigate proceedings under this new section.
358. New section 117R creates a power to make exemptions to the offences by order of the Secretary of State. Exemptions may be given to persons or persons of a class and they may excuse any removal of sewage or just some. The section sets out the procedure for making a proposed exemption including the giving of reasons and time (28 days) for representations to be made. Any notice of a proposed exemption must be served on Ofwat and published for other persons likely to be affected. Notice of an exemption to a particular person is to be served on that person and it must be published for the attention of other persons who may be affected by it. Notice of an exemption for a class of persons must be published for the attention of persons of that class and other persons who may be affected by it.
359. New section 117S provides for the revocation or variation of an exemption by order, or by direction. For exemptions of particular persons, this may be following a request of the person to whom the exemption was directed, in accordance with the order setting out the original exemption or by virtue of the Secretary of State's decision that it is no longer appropriate. For general exemptions this may be in accordance with the order setting out the original exemption or by virtue of the Secretary of State's decision that it is no longer appropriate. For individuals covered by a general exemption, that person may be excluded from the group by direction. The Secretary of State must consult Ofwat before making the revocation and give notice as set out in subsection (5).