

EXPLANATORY MEMORANDUM TO
THE UNFAIR TERMS IN CONSUMER CONTRACTS (AMENDMENT) AND
WATER ACT 2003 (TRANSITIONAL PROVISION) REGULATIONS 2006

2006 No. 523

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The Water Services Regulation Authority (“the Authority”) will replace the Director General for Water Services (“the Director General”) with effect from 1st April 2006. These regulations transfer the Director General’s designation as a “qualifying body” under the Unfair Terms in Consumer Contracts Regulations 1999 (S.I. 1999/2083) to the Authority and make provision for the continuation of the payment of pensions to former Directors General.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 The Director General is one of several bodies that has been designated a qualifying enforcement body under the Regulations that implement Council Directive 93/13/EEC on unfair terms in consumer contracts (O.J. No. L95, 21.4.93, p. 29) which were made under powers in the European Communities Act 1972. Part 2 of the Water Act 2003 amends the Water Industry Act 1991 to abolish the Director General and replace him with the Authority. The change is due to come fully into effect on 1st April and these regulations are consequential upon that change.

4.2 Former Directors General are entitled under paragraph 1 of Schedule 1 to the Water Industry Act 1991 to draw a pension, which is payable by the Director General’s department (i.e. the Office of Water Services or Ofwat). Ofwat is not a statutory body in its own right therefore a transitional provision made under Water Act 2003 powers is required to ensure that the Authority can continue making pension payments once Schedule 1 is repealed. The repeal of Schedule 1 will come into force on 1st April when the office of the Director General is abolished.

5. Extent

5.1 This instrument extends to all of the United Kingdom, except for Regulation 3 which extends to England and Wales only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Director General was designated as a qualifying body that may take certain enforcement action against misleading or unfair terms in consumer contracts. Under section 36 of the Water Act 2003, the Authority will inherit the functions currently exercised by the Director General.

7.2 The Government carried out a public consultation on new regulatory arrangements for the water industry in *Water Bill – Consultation on Draft Legislation* (Cm 4908, November 2000) which looked at introducing a statutory board to advise the Director General on the carrying out of his functions. However, in response to a number of representations, the Government decided to replace the Director General with a statutory authority in line with other regulatory bodies in the energy, telecom and postal sectors.

8. Impact

8.1 No regulatory impact assessment has been prepared in respect of this instrument as it has no impact on the costs of business. A regulatory impact assessment in respect of the Water Act 2003 was prepared and placed in the library of each House of Parliament during the passage of the Water Bill. This included an assessment of the provisions in Part 2 of that Act in relation to the setting up of the Authority.

9. Contact

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