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STATUTORY INSTRUMENTS

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**2016 No. 744**

**The Water and Sewerage Undertakers (Exit from  
Non-household Retail Market) Regulations 2016**

**PART 2**

**Exit applications**

*Making and content of exit applications*

**Power to make an exit application**

4.—(1) A relevant undertaker whose area is wholly or mainly in England may apply to the Secretary of State for permission to withdraw from the non-household retail market in relation to that area.

(2) A company that is both a water undertaker for an area wholly or mainly in England and a sewerage undertaker for an area wholly or mainly in England may make an application only if it relates to the undertaker's functions in both those capacities.

**Exit application to provide reasons for wanting to exit**

5. An exit application must provide the relevant undertaker's reasons for wanting to withdraw from the non-household retail market.

**Exit application to identify acquiring licensees**

6.—(1) An exit application must specify the eligible licensee<sup>(1)</sup> or licensees to which the relevant undertaker proposes to transfer a part of its undertaking.

(2) An eligible licensee may be specified in an exit application only if the licensee consents in writing.

(3) An exit application must be accompanied by a copy of that consent.

(4) An eligible licensee may be specified in an exit application even if it is a company associated with the undertaker.

(5) In these Regulations, "acquiring licensee" means an eligible licensee specified in an exit application.

**Exit application to identify customers' premises**

7.—(1) An exit application must identify the premises that are to be supplied with water or provided with sewerage services by an acquiring licensee instead of by the relevant undertaker.

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(1) The definition of "eligible licensee" may be found in section 52(1) of the Water Act 2014.

(2) If there is more than one acquiring licensee, the exit application must identify which premises are to be supplied with water or provided with sewerage services by which licensee.

(3) The premises must be identified in a way that will include all premises which are supplied with water or provided with sewerage services by the relevant undertaker immediately before the exit date but which the undertaker will be prohibited by regulation 20 from supplying with water or providing with sewerage services on and after the exit date.

(4) In paragraph (3), the reference to premises which are supplied with water or provided with sewerage services by the relevant undertaker includes all premises in respect of which a person is liable to pay charges to the undertaker for the supply of water or provision of sewerage services.

(5) If the relevant undertaker supplies water and provides sewerage services to the same premises, a single acquiring licensee must be identified under paragraph (2) in relation to the supply of water and the provision of sewerage services to those premises.

(6) Premises may be identified in an exit application by specifying or describing them.

(7) In these Regulations, “transferred premises”, in relation to an acquiring licensee, means premises identified in an exit application as premises to be supplied with water or provided with sewerage services by the licensee.

#### **Exit application to specify an exit date**

8.—(1) An exit application must specify the date on which the relevant undertaker proposes to withdraw from the non-household retail market in relation to its area.

(2) The exit date must not be before the end of the period of 5 months beginning with the date of the application, unless the Secretary of State has agreed to an earlier exit date.

(3) In these Regulations, “exit date”, in relation to a relevant undertaker who has made an exit application, means—

- (a) the date specified in the exit application, or
- (b) if that date is changed under regulation 13, the date most recently notified to the Secretary of State under that regulation.

#### *Notice of exit application and power to require further information*

#### **Notice of exit application**

9.—(1) Where a relevant undertaker makes an exit application, it must publish notice of the application on its website.

(2) The relevant undertaker must also give notice of the application to—

- (a) the WSRA, and
- (b) the Consumer Council for Water.

(3) A notice under paragraph (1) or (2) must specify—

- (a) the date of the exit application,
- (b) the name of the acquiring licensee or licensees, and
- (c) the exit date.

(4) A relevant undertaker that has made an exit application must comply with paragraphs (1) and (2) by the end of the period of 7 days beginning with the date of the application.

(5) A notice published on the relevant undertaker’s website under paragraph (1) must not be removed until—

- (a) the exit date has passed,
  - (b) the application is withdrawn under regulation 14, or
  - (c) the Secretary of State is notified under regulation 15 that the relevant undertaker or an acquiring licensee no longer wishes to proceed.
- (6) A duty imposed on a relevant undertaker by this regulation is enforceable under section 18 of the 1991 Act(2).

### **Power to require further information**

**10.** The Secretary of State may require a relevant undertaker that has made an exit application to provide such further information as may be required in order to determine the application.

#### *Determination of applications and conditions*

### **Determination of application**

**11.—**(1) The Secretary of State must determine an exit application by granting or refusing the relevant undertaker permission to withdraw from the non-household retail market in accordance with the application.

- (2) The Secretary of State must grant permission unless—
  - (a) it would be contrary to the interests of the public or a section of the public to grant permission, or
  - (b) the relevant undertaker has failed to comply with regulation 9 and the Secretary of State considers it appropriate to refuse permission because of that failure.
- (3) When granting permission, the Secretary of State—
  - (a) must impose the customer notification condition set out in regulation 12, and
  - (b) may impose other conditions.
- (4) The conditions that may be imposed include—
  - (a) a condition requiring an acquiring licensee to elect to be an eligible water supply licensee for the purposes of section 63AC of the 1991 Act(3);
  - (b) a condition requiring an acquiring licensee to elect to be an eligible sewerage licensee for the purposes of section 110L of the 1991 Act(4);
  - (c) a condition requiring the relevant undertaker to provide proof, before the exit date, that other conditions have been met.
- (5) The Secretary of State need not determine an exit application until the relevant undertaker has complied with any requirement to provide further information under regulation 10.
- (6) Section 195A of the 1991 Act (reasons for decisions)(5) applies as if the making of a determination under paragraph (1) were included in the list of decisions in subsection (1) of that section.

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(2) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by paragraph 26 of Schedule 7 to the Water Act 2014 (c.21) from a date to be appointed.

(3) Section 63AC is prospectively substituted by section 31 of the Water Act 2014 from a date to be appointed.

(4) Section 110L is prospectively inserted by section 32 of the Water Act 2014 from a date to be appointed.

(5) Section 195A was inserted by section 51 of the Water Act 2003. It is prospectively amended by paragraph 112 of Schedule 7 to the Water Act 2014 from a date to be appointed.

### **Customer notification condition for relevant undertakers**

**12.—(1)** This regulation sets out the customer notification condition for the purposes of regulation 11(3)(a).

(2) The customer notification condition is a condition requiring the relevant undertaker to take reasonable steps to notify each affected customer of its intention to withdraw from the non-household retail market.

(3) The notice must—

- (a) explain in general terms what is happening to the supply of water or the provision of sewerage services to the customer’s premises and why;
- (b) give an overview of the terms and conditions that will apply in relation to the customer following the exit date and how to obtain further information;
- (c) give the name and contact details of the acquiring licensee in relation to the customer’s premises;
- (d) explain the effect of regulation 17 on any outstanding complaints against the relevant undertaker;
- (e) give the customer information about how to switch supplier and where to find information about other potential suppliers.

(4) The notice must be given—

- (a) in the case of a person who is a customer immediately before the Secretary of State grants permission for the relevant undertaker to withdraw from the non-household retail market, at least 2 months before the exit date;
- (b) in the case of a person who becomes a customer after the Secretary of State grants permission, as soon as possible.

### *Modification or withdrawal of applications etc.*

### **Power to change the exit date**

**13.—(1)** A relevant undertaker that has made an exit application may change the exit date to a later date by notifying the Secretary of State in writing.

(2) The new date must fall within the period of 2 months beginning with the exit date originally specified in the exit application.

(3) The exit date—

- (a) may be changed before or after the exit application is determined, and
- (b) may be changed more than once.

(4) A relevant undertaker that changes the exit date must also change the exit date specified in the notice published on its website under regulation 9(1).

### **Withdrawal of exit application**

**14.—(1)** A relevant undertaker may withdraw an exit application by notifying the Secretary of State in writing.

(2) An exit application is to be treated as withdrawn if an acquiring licensee notifies the Secretary of State in writing that it is withdrawing its consent given under regulation 6(2).

(3) Where an exit application is withdrawn under paragraph (1), the Secretary of State must notify each acquiring licensee.

(4) Where an exit application is treated by paragraph (2) as withdrawn, the Secretary of State must notify the relevant undertaker and any other acquiring licensees.

**Notification that a party no longer wishes to proceed**

**15.**—(1) Permission for a relevant undertaker to withdraw from the non-household retail market lapses if, before the exit date—

- (a) the relevant undertaker notifies the Secretary of State in writing that it no longer wishes to proceed; or
- (b) an acquiring licensee notifies the Secretary of State in writing that it no longer wishes to proceed.

(2) Where an exit application lapses because of paragraph (1)(a), the Secretary of State must notify each acquiring licensee.

(3) Where an exit application lapses because of paragraph (1)(b), the Secretary of State must notify the relevant undertaker and any other acquiring licensees.