

EXPLANATORY MEMORANDUM TO

THE WATER ACT 2014 (CONSEQUENTIAL AMENDMENTS ETC.) ORDER 2017

2017 No. 506

1. Introduction

- 1.1 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. Purpose of the instrument

- 2.1 This instrument makes consequential amendments to a number of enactments in connection with the commencement of the Water Act 2014 (c.21) (the “2014 Act”). In this instrument the “1991 Act” means the Water Industry Act 1991 (c.56) and “Ofwat” means the Water Services Regulation Authority.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

- 4.1 Under section 90 (*power to make consequential provision*) of the 2014 Act the Secretary of State has the power to make consequential amendments by order (statutory instrument) in Parliament. Due to the amount of legislation with regard to water, it was deemed unlikely that all the necessary consequential amendments would be made by Schedule 7 (*further amendments*). Therefore this power enables any further amendments to be made as a consequence of the commencement of the provisions in the 2014 Act. Section 90(3) and (4) set out the Parliamentary procedure for these orders (affirmative procedure for amendments to primary legislation and negative procedure for secondary legislation) respectively. This consequential order includes amendments to primary legislation and therefore will be subject to the affirmative procedure.
- 4.2 This instrument also makes some consequential amendments under section 103 of the Water Act 2003 (c.37).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom. The instrument contains some provisions extending to all of the United Kingdom, some provisions extending to Great Britain and some provisions extending to England and Wales. The amendments and repeals in the instrument have the same extent as the enactment amended or repealed.

5.2 The territorial application of this instrument varies between provisions. Most of the provisions apply to England and Wales, some provisions apply to England only or Wales only and some provisions also apply to Scotland. This instrument includes amendments to Welsh legislation.

6. European Convention on Human Rights

6.1 Thérèse Coffey, the Parliamentary Under Secretary of State for Environment and Rural Life Opportunities has made the following statement regarding Human Rights: “In my view the provisions of the Water Act 2014 (Consequential Amendments etc.) Order 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 The 2014 Act will reform the water industry to help us face future challenges arising from a growing population and changing climate. The Act will increase resilience, support growth and provide choice. A key component of the 2014 Act is market reforms to the non-household market, which includes the creation of new licences and conditions. These reforms have required certain references to be substituted via consequential amendments across a wide selection of legislation. A large proportion of which was covered by the 2014 Act and in particular Schedule 7.

7.2 Since the 2014 Act received Royal Assent the Government has been working towards the opening of the new non-household retail market in April 2017 and has completed seven Commencement Orders. During this time it has become apparent that further consequential amendments are needed.

Water Supply and Sewerage Licensing regime

7.3 One aspect of the reforms in the 2014 Act is to the water supply licensing (WSL) regime in England. These reforms will allow more competition in the retail market for non-household customers. The reformed WSL will be known as the water supply and sewerage licensing regime (WSSL). Schedule 7 (*further amendments*) to the 2014 Act gives effect to the new provisions in relation to water supply licensees and sewerage licensees. This instrument makes further amendments to other enactments in consequence of those changes.

7.4 Included in these reforms is changing the term “licensed water supplier” to “water supply licensee” to reflect that the ban on more than one licensee providing services to individual premises was removed by the 2014 Act. This instrument makes further amendments to other enactments in consequence of those changes.

7.5 The 2014 Act also replaced a requirement for water supply licences to only be held by limited companies (limited by shares) registered in England and Wales or Scotland under the Companies Act 2006 and therefore changed references from “company” to “person” etc. This means that licences with retail or restricted retail authorisations may be held by other legal entities including companies limited by guarantee or registered in Northern Ireland, partnerships, foreign registered companies or sole traders. This instrument makes further amendments to other enactments in consequence of those changes.

Connection charges

- 7.6 Included within the 2014 Act were powers for Ofwat to issue charging rules for connecting premises to the water or sewerage network, building new supply pipes and sewers, and moving pipes. These charging rules cover what costs a water company may charge for such works. This instrument makes further amendments to the 1991 Act in consequence of Ofwat's charging rules.

Environmental Permitting Regime

- 7.7 The 2014 Act also amended the environmental permitting regime to consolidate into that regime the requirements relating to water abstraction and impoundment licences, flood defence consents and fish passage approvals. The 2014 Act also gave the Secretary of State or Welsh Ministers the power to produce a single set of regulations, covering these permits as well as the existing pollution prevention and control, which will enable operators to apply for one rather than multiple permits. This instrument makes further amendments to other enactments in consequence of those changes and reflects the new regulations under section 61 of the 2014 Act.

Disclosure of information

- 7.8 Under section 206 (*restriction on disclosure of information*) of the 1991 Act there is a restriction on the sharing of certain information about certain persons or business and sub-section (3) of section 206 disappplies this restriction in certain circumstances. Mirror sections are also included in other enactments which include references to water legislation. To ensure consistency and that they are up to date this instrument makes further amendments to other enactments to include the 2014 Act so information can be shared.

Consolidation

- 7.9 The instrument makes minor amendments to a large number of different enactments and so no question of consolidation arises. Informal consolidated versions of some of the enactments as amended may be available at <http://www.legislation.gov.uk>.

8. Consultation outcome

- 8.1 No formal consultation was undertaken on these consequential amendments as they make technical and relatively minor amendments that are consequential on provisions of the 2014 Act which were scrutinised by Parliament. The Government has, however, consulted with Ofwat, the Drinking Water Inspectorate and the Welsh Government, since they have an interest in the legislation being amended by the instrument.

9. Guidance

- 9.1 No guidance is required in respect of this instrument.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument. The summary impact assessment for the 2014 Act, introduced into Parliament on 27 June 2013,

contains an assessment of the effect that the reforms will have on the business, voluntary and public sectors and has been published on: <http://www.parliament.uk/>.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The provisions of the 2014 Act and, by extension, the provisions of this instrument, will be subject to the normal post-legislative review three to five years after Royal Assent.

13. Contact

13.1 William Harrington at the Department for Environment, Food and Rural Affairs
Telephone: 020 802 64273 or email: william.harrington@defra.gsi.gov.uk can answer any queries regarding the instrument.